This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

+ *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.

+ *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.

+ *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.

+ *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at `http://books.google.com/`

LAW BOOKS

PUBLISHED BY

W. MAXWELL & SON,

8, BELL YARD, TEMPLE BAR, W.C.

The Annual Chancery Practice, 1882.

Being a Collection of the Statutes, Orders, and Rules relating to the General Practice, Procedure, and Jurisdiction of the Chancery Division of the High Court of Justice, and on Appeal therefrom to the Court of Appeal; with Copious Notes, Forms, &c. By THOMAS SNOW, M.A., of the Inner Temple, Esq., Barrister-at-Law; and HUBERT WINSTANLEY, of Lincoln's Inn, Esq., Barrister-at Law; Authors of the Lancaster "Chancery Practice." In 1 vol. 8vo. Price 15*s.* cloth. 1882.

"The authors of this work have endeavoured to present to the practitioners of both branches of the profession a handy and inexpensive work on the practice of the High Court of Justice, having special reference to the Chancery Division.

"It is intended to issue a new edition of this work at the commencement of each year, and it is obvious that this yearly opportunity of revision will enable the authors to avail themselves of the criticisms and suggestions which they hope to receive for the purpose of correcting present errors and introducing improvements, so that in a short period they may hope to produce a perfect epitome of the current practice of the day."—*Extract from Preface.*

Davidson's Concise Precedents in Conveyancing. Twelfth Edition.

Concise Precedents in Conveyancing, Revised and adapted to the Conveyancing and Law of Property Act, 1881, with Practical Notes and Observations on the Act, and on some earlier Acts relating to Real and Personal Property. Twelfth Edition. By M. G. DAVIDSON, of Lincoln's Inn, Esq., Barrister-at-Law. Crown 8vo. Price 21*s.* cloth.

Rawlinson's Corporation Acts. Seventh Edition.

The Municipal Corporation Act, 5 & 6 Will. IV. c. 76, and the Acts since passed for amending the same, and otherwise in relation to Municipal Corporations; with Notes and References to the Cases thereon: and an Appendix, containing the principal Statutes referred to, including those relating to Mandamus and Quo Warranto, and Corrupt Practices at Parliamentary Elections; a List of Boroughs having Quarter Sessions; Borough Court Rules, &c. By THOMAS GEARY, of the Middle Temple, Barrister-at-Law. 8vo. Price 1*l.* 16*s.* cloth. 1881.

Cababé on Interpleader and Attachment of Debts.

The Law and Practice of Interpleader, and the Law and Practice of the Attachment of Debts in the High Court of Justice and the County Courts, together with Forms of the Summonses, Orders, Affidavits, &c., used therein. By MICHAEL CABABÉ, of the Inner Temple, Barrister-at-Law. Crown 8vo. Price 7*s.* 6*d.* cloth. 1881.

Flood on Libel and

A Concise and Pra cerning Libel and Slander, chiefly in r iduals. By JOHN C. H. FLOOD, of th r-at-Law. Crown 8vo. Price 14*s.* cl

Westlake on Private International Law.

A Treatise on Private International Law, with Principal Reference to its Practice in England; being in lieu of a Second Edition of the work published in 1858. By JOHN WESTLAKE, Q.C., late Fellow of Trinity College, Cambridge; Hon. LL.D. Edinburgh; Member of the Institute of International Law. Royal 8vo. Price 15*s.* cloth. 1880.

Hunter's Introduction to Roman Law.

An Introduction to the Study of Roman Law and The Institutes of Justinian. By W. A. HUNTER, M.A., of the Middle Temple, Barrister-at-Law, Professor of Jurisprudence, University College, London. Crown 8vo. Price 7*s.* 6*d.* cloth. 1880.

Key and Elphinstone's Compendium of Precedents and Forms in Conveyancing. Second Edition.

Comprising the Forms required in Ordinary Practice, with Practical Notes. Second Edition. Revised throughout and adapted to the Conveyancing and Law of Property Act, 1881, with considerable additions. By THOMAS KEY and H. W. ELPHINSTONE, both of Lincoln's Inn, Esqs., Barristers-at-Law. In 2 vols. 8vo. [*In the press.*

Bateman's Law of Auctions. Sixth Edition.

The Auctioneer's Guide, containing a Practical Treatise on the Law of Auctions; including Sales under Process, under Distraints for Rent, under the Pawnbrokers' Act, 1872, the Innkeepers' Act, 1878, the Summary Jurisdiction Act, 1879, &c., with a complete series of Forms and Precedents, Rules for Valuing Property and Useful Tables. Sixth Edition. By OLIVER SMITH and PATRICK FLEMING EVANS, of the Inner Temple, Barristers-at-Law. [*In the press.*

Broom's Philosophy of Law. Second Edition.

The Philosophy of Law; being Notes of Lectures delivered at the Inner Temple Hall during twenty-three years, 1852–1875. Adapted for Students and the Public. By HERBERT BROOM, LL.D., late Professor of Common Law to the Inns of Court. Crown 8vo. Price 6*s.* cloth. 1878.

Heywood's Practice of the County Courts. Third Edition.

The Jurisdiction and Practice of the County Courts; comprising the whole Practice, except in Admiralty and Bankruptcy, with Appendices containing the Employers' Liability Act, 1880, and the Rules of 1880, including the Practice under it. By GEORGE WASHINGTON HEYWOOD, of the Middle Temple, Barrister-at-Law. Royal 12mo. Price 15*s.* cloth. 1881.

Smith's Leading Cases. Eighth Edition.

A Selection of Leading Cases in various branches of the Law, with Notes. Third and Fourth Editions, by JAMES SHAW WILLES and HENRY SINGER KEATING, Esqrs., of the Inner Temple, afterwards Judges of Her Majesty's Court of Common Pleas. Eighth Edition. By R. HENN COLLINS and R. G. ARBUTHNOT, Esqrs., Barristers-at-Law. In 2 vols. Royal 8vo. Price 3*l.* 15*s.* cloth. 1879.

Broom's Common Law. Fifth Edition.

Commentaries on the Common Law, designed as Introductory to its Study. By HERBERT BROOM, LL.D., Barrister-at-Law, late Professor of Common Law to the Inns of Court. 8vo. Price 1*l.* 11*s.* 6*d.* cloth. 1880.

Kerr on Injunctions. Second Edition.

A Treatise on the Law and Practice of Injunctions in Equity. By WILLIAM WILLIAMSON KERR, A.M., Oxon., of Lincoln's Inn, Barrister-at-Law. Royal 8vo. Price 1*l.* 12*s.* cloth. 1878.

L.Eng. C28e
Property 42

CW.U.K.
540
T4286

THE

MARRIED WOMEN'S PROPERTY ACT, 1882.

THE

MARRIED WOMEN'S PROPERTY ACT, 1882;

TOGETHER WITH THE

ACTS OF 1870 AND 1874,

AND AN

INTRODUCTION ON THE LAW OF MARRIED WOMEN'S PROPERTY.

WITH APPENDIX,

CONTAINING

STATUTES, FORMS, AND PRECEDENTS.

BY

RALPH THICKNESSE, B.A.

CHRIST CHURCH, OXFORD, AND OF LINCOLN'S INN, BARRISTER-AT-LAW.

BIBLIOTHECA
DEC 1882
BODLEIANA

LONDON:

W. MAXWELL & SON, 8, BELL YARD, TEMPLE BAR,

Law Booksellers and Publishers.

MEREDITH, RAY, & LITTLER, MANCHESTER.

C. F. MAXWELL, MELBOURNE & SYDNEY.

1882.

LONDON:
BRADBURY, AGNEW, & CO., PRINTERS, WHITEFRIARS.

PREFACE.

In the edition of the Married Women's Property Acts here presented, it has been thought most convenient to place the law and cases on all three Acts of 1870, 1874, and 1882, in the notes to the Act of 1882.

There are cross references between that Act and the corresponding sections of the Acts of 1870 and 1874, which will be found set out in the Appendix, with some other enactments relating to married women. A few forms have been added, including the new form necessitated by the decision in *Pike* v. *Fitzgibbon*, which is not yet printed in Seton. The law of Married Women's Property, as modified by the Acts, is concisely given in the Introduction. In his notes on the new Act the Author has endeavoured to notice every judicial decision

likely to have any bearing on its operation ; and, where no such decision exists, to point out the various questions which are likely to arise, and the different constructions which may be placed on the language of the Act.

4, STONE BUILDINGS,
6th October, 1882.

TABLE OF CONTENTS.

PAGE

PREFACE v

TABLE OF CASES xiii

INTRODUCTION.

The law of Married Women's Property 1

Changes effected by the Act of 1882 1

The Act founded on the doctrine of separate use . . . 4

The course of English law 4

The common law 5

Separate use arose in Chancery 5

1. The acquisition and disposition of separate property . 6

A. By declaration of trust or contract 6, 7

B. By dealings with husband during marriage . . 7—9

C. By equity to a settlement . . . . . 9—11

D. By savings 11

E. By desertion, &c. 12

F. By the Married Women's Property Acts . 12—16

Real estate held in equity as separate property . 16, 17

Personalty 18

Will of separate property . . . . . 18—21

2. Contract and liability 21

General power to contract . . . . . 21—24

General engagements binding . . . . . 24—30

Execution of power by married woman 30

Creditor's rights against separate property . . 31—34

Effect of fraud . . . . . 34—36

Suing 36

PAGE

3. Devolution on death . . . . . 36—41
Real property 36
Right of husband to administer 37
Exclusive right to personalty 39
Will 40

THE MARRIED WOMEN'S PROPERTY ACT, 1882.

SECT.

1. (1) Married woman to be capable of holding property and of contracting as a *feme sole* 42
(2) Contract; liability; suing (Act of 1870, sec. 11) . . 48
(3) Every contract to bind her separate estate 60
(4) Every contract to bind after-acquired property . . . 62
(5) Married woman trader liable to bankruptcy 64
2. Property of woman married after the Act to be held by her as a *feme sole* (Act of 1870, secs. 1, 7, 8) 66
3. Loans to husband assets in his bankruptcy 70
4. Execution of a general power by Will to make property assets 72
5. Property acquired after the Act by a woman married before it to be held by her as a *feme sole* (Act of 1870, secs. 1, 7, 8) 73
6. Investments standing in the name of a married woman at the commencement of the Act (Act of 1870, secs. 2—5) 78
7. Future investments to be her separate property (Act of 1870, secs. 2—5) 83
8. Investments in joint names (Act of 1870, secs. 2—5) . . 86
9. Not necessary for husband to join in transferring (Act of 1870, secs. 2—5) 87
10. Fraudulent investments of husband's money (Act of 1870, secs. 2—5); gifts by husband to wife; investments in fraud of creditors (Act of 1870, sec. 6) 88
11. Policies of assurance (Act of 1870, sec. 10) 91
12. Remedies of married woman, civil and criminal (Act of 1870, sec. 11) 95
13. Ante-nuptial liabilities of wife (Act of 1870, sec. 12) . . 98

SECT. PAGE
14. Ante-nuptial liabilities of wife, husband's liability (Act of 1870, sec. 12 ; Act of 1874, secs. 1, 2, 5) . . . 104
15. Suing husband and wife for ante-nuptial liabilities of wife (Act of 1874, secs. 3, 4) 112
16. Criminal liability of wife 114
17. Summary jurisdiction in questions between husband and wife (Act of 1870, sec. 9) 115
18. Married woman executrix or trustee 124
19. Saving settlements and restraint on anticipation . . . 125
20. Married woman liable for maintenance of husband (Act of 1870, sec. 13) 132
21. Maintenance of children and grandchildren (Act of 1870, sec. 14) 133
22. Repeal of Married Women's Property Acts, 1870–4 . . 135
23. Legal personal representative to stand in place of married woman 136
24. Liability of married woman and husband for devastavits and breaches of trust 137
25. Commencement of Act 140
26. Act does not extend to Scotland 140
27. Short title 140

APPENDIX.

THE MARRIED WOMEN'S PROPERTY ACT, 1870 141
THE MARRIED WOMEN'S PROPERTY ACT, 1874 . . . 150
THE DIVORCE ACT, 1857 (secs. 21, 25, 26) 153
THE DIVORCE ACT, 1858 (secs. 7, 8) 155
THE CONVEYANCING ACT, 1881 (secs. 39, 40, 50) . . . 157
THE CONVEYANCING ACT, 1882 (secs. 1, 7) 158
THE FINES AND RECOVERIES ACT (sec. 79, amended) . . 160
MALINS' ACT 160
THE SETTLED LAND ACT, 1882 (secs. 1, 59, 60, 61) . . . 163

FORMS.

FORM		PAGE
I.	Order for wife to defend separately on her application under R. S. C. Order XVI. 8	165
II.	Transfer and payment to the husband where property is outside the Acts, or where the wife waives her right and there is no settlement	166
III.	Transfer of married woman's fund into her own name under the Act of 1870 or the Act of 1882	166
IV.	Transfer and payment to the wife on her separate receipt; where property comes to her under the Act of 1882, or sections 7 or 8 of the Act of 1870; where existing settlement does not affect the fund	167
V.	Order for transfer to a married woman, who had obtained a protection order, of reversionary interest which had fallen into possession since her desertion; or under the Acts of 1870–82	168
VI.	Appointment of a trustee to receive policy moneys under the Acts of 1870, sec. 10, or 1882, sec. 11; where there is no trustee of such policy at the time of the death of the insured	168
VII.	Appointing new trustees of a policy under section 11 of the Act of 1882, and the Trustee Acts	169
VIII.	Decree charging against her separate property a debt incurred by a married woman, including, or excluding after-acquired property, and excluding property as to which she is restrained from anticipation	170
IX.	Form of Judgment in Q. B. D. under Order XIV. 1A, and Order XXIX. r. 10, adopted in *Macqueen* v. *Turner* (30 W. R. 80)	171
X.	Amount of debt and costs recovered in an action against a married woman declared a charge upon her separate property, without prejudice to any rights of her trustee not made a party to the action; costs of husband	172
XI.	Decree charging against her separate property an antenuptial debt incurred by a married woman; husband's and trustee's costs	172

FORM PAGE

XII. Administration of personalty and realty of a married woman at the trial, or under Order XV. r. 1, or on summons under 15 & 16 Vict., c. 86; testacy or intestacy 173

PRECEDENTS.

PREC.

I. Indorsement of writ. Claim on promissory note of husband and wife to charge separate property . . 173

II. Statement of claim in an action to charge husband and wife with the ante-nuptial liabilities of the wife, notwithstanding a restraint on anticipation. Variations where judgment has been previously entered in favour of the husband. 174

III. Statement of claim of wife, a separate trader, in an action for an injunction against her husband 177

IV. Notice of motion, or summons for the decision of a question as to property under Act of 1882, sec. 17, or Act of 1870, sec. 9 178

INDEX 179

TABLE OF CASES.

	PAGE
Ackroyd, Brown *v.*	62
Adair *v.* Shaw	137, 138, 139
Adams, Mudge *v.*	37
Allen *v.* Bonnett	131
— *v.* Papworth	57
— *v.* Walker	17
Alsop, Thomas *v.*	133
Alton *v.* Harrison	131
Amphlett, Jay *v.*	33, 113
Andrew *v.* Raeburn	118
Andrews, Douglas *v.*	134
Angas' Case	82
Angas, Ness *v.*	82
Anon. 2 Ves. Jr.	55
— 3 Jur. N. S.	57
— Style	125
Appleton *v.* Rowley	17, 36
Arabin, Beale *v.*	62
Archer *v.* Lavender	39, 45
Armstrong, Flemming *v.*	129
—, Tullett *v.*	6, 27, 62, 128
Arnold *v.* Woodhams	35, 138
Ashton *v.* M'Dougal	7
Ashworth *v.* Outram	5, 9, 65, 69, 77
Atkins, Essex *v.*	121
Attenborough *v.* London and St. Katherine's Docks Co.	123
Att.-Gen. *v.* Partington	38
Attwood *v.* Chichester	52, 54, 58

	PAGE
Baddeley *v.* Baddeley	8, 89
Bailey, *Re*	41
Baily, Williams *v.*	23
Baker, Caldicot *v.*	51
—, Scales *v.*	18, 120
Ball, Shipway *v.*	11
Ballenden, Davies *v.*	35, 58, 129
Bank of England, Bathe *v.*	45, 88
— —, Howard *v.*	45, 50, 81, 84, 88
Bannister, Martin *v.*	123
Barlee *v.* Barlee	60
—, Murray *v.*	26, 27, 51, 60
Barnard *v.* Ford	10
Barnet, Phillips *v.*	44, 57, 98
Barr *v.* Carter	41
Barrack *v.* M'Culloch	11, 18, 120
Barrow *v.* Barrow	23
Bartholomew, *Re*	84
Bathe *v.* Bank of England.	45, 88
Bazley *v.* Forder	62
Beale *v.* Arabin	62
Beardmore *v.* Gregory	52
Beeching *v.* Morphew	57
Bennet *v.* Davis	4, 6, 15, 67
Bennett, Thompson *v.*	28, 29
Benton, *Re*	128
Beynon *v.* Jones	114
Beresford *v.* Hobson	10

	PAGE
Bertie *v.* Lord Chesterfield	40
Bestall *v.* Bunbury	17
Biaggi, *Re*	77, 139
Biddle *v.* Bond	123
Billingsley *v.* Critchett	134-5
Bird *v.* Peagrim	37, 39
Biscoe *v.* Kenedy	100
Bishop *v.* Wall	20, 45
Blades *v.* Free	62
Blake, Fitzgibbon *v.*	129
Blakeaway, Steward *v.*	18, 37
Blatchford *v.* Wooley	30
Blaquiere, Hunt *v.*	61
Blunt, Wyborn *v.*	55
Bogle, London and Provincial Bank *v.*	54, 102, 113, 130
Bolden *v.* Nicholay	26, 31, 51
Bond, Biddle *v.*	123
Bonner *v.* Bonner	10
Bonnett, Allen *v.*	131
Borman, Scarborough *v.*	6
Boughey, Troutbeck *v.*	16, 19
Bower *v.* Smith	74
Bowes, Strathmore *v.*	67, 119
Bradley, Garnet *v.*	113
Braithwaite, Teasdale *v.*	722
Brearley, Ramsden *v.*	52, 97
Bremner, Needham *v.*	61
Brenchley *v.* Lyon	41
Breton, *Re*	8, 89
Brettle, *Re*	129
Briscoe, Head *v.*	59, 107
Bromley, *Re*	27, 62
Brook *v.* Turner	19
Brooke *v.* Brooke	11, 12, 120
—, Parker *v.*	6, 15
Brooks *v.* Brooks	56
Brotheridge, Lechmere *v.*	18
Brown *v.* Ackroyd	62
— *v.* North	53
—, Wood *v.*	125
Brownrigg *v.* Pike	21, 37, 41
Bubb, Pride *v.*	8, 16, 17, 19, 22, 43
Bull *v.* Withey	57
Bullen, Humphrey *v.*	37, 38
Buller, Flower *v.*	29, 58
Bullock, Tomlinson *v.*	104, 112, 140
Bulmer *v.* Hunter	90
Bulpin *v.* Clarke	26
Bunbury, Bestall *v.*	17
Bunyan *v.* Mortimer	55, 57
Burchell, Eastland *v.*	61
Burdett, Jolland *v.*	129
Burdick *v.* Garrick	56
Burdon *v.* Dean	10
Bushby, *Re*	129
Butler *v.* Cumpston	22, 26, 80, 82
—, Ivens *v.*	33, 113
Butlin's Trusts	84
C. *v.* C.	118
Cadogan, Lord, Wright *v.*	16, 19
Caldicot *v.* Baker	51
Callow *v.* Howle	57
Calmady *v.* Calmady	9
Campbell, Duncan *v.*	11
—, Owden *v.*	52
Canning, Poole *v.*	56, 114
Carew, Clive *v.*	36, 57, 128, 138
Carlill, Green *v.*	121
Carnatic Railway Co., Reg. *v.*	80
Carnegie, Hope *v.*	55, 58
Carr *v.* Eastabrooke	11
Carter, Barr *v.*	41
Cashin, Duncan *v.*	11, 18
Cathcart, Keogh *v.*	57
Castle, Fear *v.*	110
Catterall *v.* Kenyon	59
Cecil *v.* Juxon	9, 12
Champneys, Sturgis *v.*	10
Chard, Wright *v.*	51, 54

PAGE

Charman, Culley *v.* . . . 133
Chesterfield, Lord, Bertie *v.* . 40
Chichester, Attwood *v.* 52, 54, 58
Christie *v.* Ovington . . 47
Christopher, Nagle-Gillman *v.* 116
Chubb *v.* Stretch 32, 33, 100, 103, 109, 114, 130
Churchill *v.* Dibbey . . 16, 20
City Bank, Summers *v.* . 50, 96
Clark, *Re*. 128
Clarke, Bulpin *v.* . . . 26
— , Messenger *v.* . . 12, 120
— *v.* Wright . . . 109
Clerk *v.* Miller 57
Clerke *v.* Clerke . . 125, 139
Clinton *v.* Willes . . . 24
Clive *v.* Carew 36, 57, 128, 138
Clough *v.* Dixon . . . 138
Cockell, Rich *v.* . . . 15
Cofield *v.* Pollard . . . 73
Cohen, White *v.* . . . 96
Coleman *v.* Overseers of Birmingham 133
Collett *v.* Dickenson 28, 58, 118
— , Roberts *v.* . . 11
Columbine *v.* Penhall . . 90
Conlon *v.* Moore 101, 103, 105, 111, 130
Cooke *v.* Fuller . . . 127
Cooper, *Re* 19
— *v.* Macdonald 16, 17, 36, 128
— *v.* Martin . . . 134
Copperthwaite *v.* Tinte . . 55
Corp, Sturges *v.* . . 18, 20, 43
Costick, Laporte *v.* . . 65, 70
Cotton, King *v.* . . . 119
Coward and Adams' Purchase . 68
Cowan, Morrell *v.* . . 26, 60
Cowie, Peters *v.* . . . 132
Cox *v.* Hickman . . . 71

PAGE

Crawford, Kevan *v.* . 54, 90
Critchett, Billingsley *v.* . 134–5
Crofts *v.* Middleton . . 17
Crompton, De Manneville *v.* . 119
Crookes *v.* Whitworth . . 52
Croughton's Trusts, *Re* . 57, 128
Croxton *v.* May . . . 10
Crump, *Re* 57
Culley *v.* Charman . . 133
Cumpston, Butler *v.* 22, 26, 80, 82
Cunningham, Dillon *v.* . 56, 114

Danger, Hodson *v.* . . . 73
Darkin *v.* Darkin . . 18, 120
Davies, *Ex parte* . . . 123
— *v.* Ballenden 35, 58, 129
— , Bennet *v.* 4, 6, 15, 67
— *v.* Jenkins 26, 58, 118
— , MacHenry *v.* 26, 27, 60
Dawes, Smallpiece *v.* 61, 65, 70, 78
Dawson, *Re* 41
Dayrell, Wordsworth *v.* . . 57
Dean, Burdon *v.* . . . 10
Deare *v.* Soutten . . . 62
Debenham *v.* Mellon . . . 61
De Greuchy *v.* Wills . . 110
Delaval, Pawlet *v.* . . . 121
Delbridge, Richards *v.* . . 8, 89
De Manneville *v.* Crompton . 119
Dibbey, Churchill *v.* . . 16, 20
Dickenson, Collett *v.* 28, 58, 118
— , Owens *v.* . 28, 29
Dillon *v.* Cunningham . 56, 114
Dixon, Clough *v.* . . . 138
— *v.* Dixon . . . 120
Douglas *v.* Andrews . . . 134
— , Mackay *v.* . 90, 131
Dowling *v.* Maguire . . . 22

PAGE

Downes *v.* Jennings . 119, 120
Downs, England *v.* 9, 52, 70, 119
Driver, Pooley *v.* . . . 72
Drury, &c., Nicholson *v.* . 68
Dubois, Richardson *v.* . . 62
Duear *v.* McIntosh . . . 123
Duncan *v.* Campbell . . 11
— *v.* Cashin . . 11, 18
Durrant *v.* Ricketts . 40, 58
Dye, *Re* 125

Earl *v.* Ferris . . 55, 117
Eastabrooke, Carr *v.* . . . 11
Eastland *v.* Burchell . . 61
Easum, Winter *v.* . . . 26
Elibank, L., *v.* Montolieu . 10
— , Murray *v.* . . . 10
Elliot *v.* Hooper . . . 133
Ellis's Truste, *Re* . . 57, 128
Elsworthy *v.* Wickstead . . 11
Engelback *v.* Nixon . . 11, 18
England *v.* Downs 9, 52, 70, 119
Essex *v.* Atkins . . . 121
Estcourt *v.* Ewington . . . 55
Etches, Smith *v.* . . . 56
Evans, Hughes *v.* . . . 52
— , Roberts *v.* . . . 52
Everall, Holt *v.* . . 93, 94
Ewer, Ross *v.* . . . 41
Ewington, Estcourt *v.* . . 55
Eykyn, *Re* 9, 80
— , Macbryde *v.* . . . 56
Eyre *v.* C. of Shaftesbury . 134

Fairhurst, Liverpool, &c., *v.* 59, 62, 70
Fear *v.* Castle . . . 110
Ferner *v.* Taylor . . . 10
Ferris, Earl *v.* . . 56, 117

PAGE

Fettiplace *v.* Gorges 18, 19, 20, 43
Field *v.* Hanger . . . 38
— , Mayd *v.* . 26, 30, 31, 51
Fielder, Proudley *v.* . . 37, 38
Finch *v.* Finch . . . 9, 90
Fitch, Graham *v.* . . . 57
Fitzgibbon *v.* Blake . . 129
— , Ortmer *v.* . . 58
— , Pike *v.* 5, 29, 30, 31, 32, 49, 50, 51, 58, 63, 72, 100, 102, 129
Flemming *v.* Armstrong . . 129
Flower *v.* Buller . . 29, 58
Follett *v.* Tyrer . . . 36
Ford, Barnard *v.* . . . 10
— , Wilson *v.* . . . 62
Forder, Bazeley *v.* . . . 62
Foster *v.* Lister . . . 8, 22
Fox *v.* Hawkes 8, 89
— , Hope *v.* . . . 56
Foy, Sharpe *v.* 35
Frank *v.* Mackay . . . 84
Franks, *Ex parte* . . 28, 64
Frankum, Gaston *v.* . . 22
Free *v.* Blades 62
Freeman, Morris *v.* . . 60
— *v.* Pope . 90, 131, 132
Fuller, Cooke *v.* . . . 127

Gaffee, *Re* . . . 7, 128
Gallagher, Johnson *v.* 24, 25, 26, 27, 29, 32, 51, 60
Gardner *v.* Rowe . . . 90
Garnet *v.* Bradley . . . 113
Garrick, Burdick *v.* . . 56
Gaston *v.* Frankum . . . 22
Gaston, Sealey *v.* . . . 51
Geare, O'Dwyer *v.* . . . 41
George *v.* Jew . . 16, 20
Giacometti *v.* Prodgers . . 11

	PAGE
Gill, *Re*	38
—, Haselinton *v.*	90
Glazebrook *v.* Percival	120
Glubb, Slocombe *v.*	119-20
Glynes, Munt *v.*	127
Goddard *v.* Snow	68, 119
Godfrey *v.* Harben	30, 31, 72
Gore *v.* Knight	11
Gorges, Fettiplace *v.*	18, 19, 20, 43
Graham *v.* Fitch	57
— *v.* Londonderry	7
Grange *v.* White	52
Grant *v.* Grant	8, 9, 90
Green *v.* Carlill	121
— *v.* Green	9, 56, 70, 78, 117
— *v.* Lyon	35
Greenwell *v.* Greenwell	134
Greenwood, Wallace *v.*	52
Gregory, Beardmore *v.*	52
— *v.* Lockyer	40
HALL *v.* Waterhouse	14, 16, 17, 19, 43
Halsam, *Ex parte*	55
Ham *v.* Toovey	61
Hamilton, Ottaway *v.*	62
Hancock *v.* Lablache	52, 54
Hanger, Field *v.*	38
Harben, Godfrey *v.*	30, 31, 72
Harding, *Re*	38
Harman *v.* Richards	131-2
Harrison, Alton *v.*	131
Haselinton *v.* Gill	90
Hatcher, *Ex parte*	83, 85, 107
Hawkes, Fox *v.*	8, 89
Hay, *Re*	38
Haycock's Policy	95, 123
Hayes *v.* Kindersley	80
Hays, Salmon *v.*	41
Hayter, Phillipson *v.*	61
Head *v.* Briscoe	59, 107
Headen *v.* Rosher	20
Heard *v.* Stamford	33, 40, 59, 106
Heatley *v.* Thomas	30
Henry *v.* Ogle	10
Hewison *v.* Negus	7, 22
Heygate *v.* Thompson	56
Heyl, Wainford *v.*	35, 48, 50, 99, 138
Hickman, Cox *v.*	71
Higgins, Jones *v.*	36
Higginson *v.* Wilson	56
Hill, Keyworth *v.*	59
Hine, Picard *v.*	22
Hobday *v.* Peters	30, 63
Hobson, Beresford *v.*	10
Hodge, Walter *v.*	80
Hodgens *v.* Hodgens	134
Hodges *v.* Hodges	61, 129
Hodgson *v.* Williamson	29, 32, 58, 61, 100, 101, 136
Hodson *v.* Dancer	73
Holcombe *v.* Trotter	55
Holden *v.* Waterlow	57
Holland, *Ex parte*	27, 64
Holmes *v.* Penney	90, 131
Holt *v.* Everall	93, 94
Home *v.* Patrick	57
Honeywell *v.* Whitley	55
Hooper, *Re*	62
—, Elliot *v.*	133
Hope *v.* Carnegie	55, 58
— *v.* Fox	56
Hopkins, Tugman *v.*	41, 90
Houlton, Reg. *v.*	97
Howard *v.* Bank	45, 50, 81, 84, 88
Howle, Callow *v.*	57
Hughes *v.* Evans	52
— *v.* Wells	18, 120
Hulme *v.* Tennant	58
Humphrey *v.* Bullen	37, 38

	PAGE
Hunt, Blaquiere *v.*	61
— *v.* Matthews	119
Hunter, Bulmer *v.*	90
Huxtable, *Ex parte*	131
Insole, *Re*	68
Ironmonger, Lane *v.*	61
Ivens *v.* Butler	33, 113
Jarman *v.* Woolston	90
Jay *v.* Amphlett	33, 113
Jenkins, Davies *v.*	26, 58, 118
Jenner *v.* Morris	62
Jennings, Downes *v.*	119, 120
Jew, George *v.*	16, 20
Johnson *v.* Gallagher	24, 25, 26, 27, 29, 32, 51, 60
Johnston *v.* Sumner	61
Jolland *v.* Burdett	129
Jones, *Ex parte.*	27, 48, 58, 64
— , Beynon *v.*	114
— *v.* Higgins	36
— , Thomas *v.*	18, 20, 21, 73
Jordan, *Re*	21, 41
Juxon, Cecil *v.*	9, 12
Kane *v.* Kane	127
Keane, *Re*	129
Keays *v.* Lane	36, 138
Kenedy, Biscoe *v.*	100
— , Maloney *v.*	37, 39, 40
Kenyon, Catterall *v.*	59
Keogh *v.* Cathcart	57
Kevan *v.* Crawford	54, 90
Keyworth *v.* Hill	59
Kindersley, Hayes *v.*	80
King *v.* Cotton	119
— *v.* Voss	13, 74, 75
Kingham *v.* Lee	138
Kingsman *v.* Kingsman	12, 53, 54, 120, 124, 125
Kluht's Case	33, 82
Knight, Gore *v.*	11
Lablache, Hancock *v.*	52, 54
Laing *v.* Zeden	123
Lancashire and Yorkshire Bank *v.* Tee	26
Lane *v.* Ironmonger	61
— , Keays *v.*	36, 138
— *v.* Oakes	74, 75
Laporte *v.* Costick	65, 70
Lavender, Archer *v.*	39, 45
Lavie *v.* Philips	28, 64
Lechmere *v.* Brotheridge	18
Lee, Kingham *v.*	138
Lempriere, London Chartered Bank *v.*	25, 26, 30, 31, 34, 50, 60, 72
Leonard, Wright *v.*	59
Lewes, &c., Peters *v.*	67, 126
Lewin's Trusts, *Re*	11
Lillwall, *Re*	95, 129
Lister, Foster *v.*	8, 22
Liverpool, &c., *v.* Fairhurst	59, 62, 70
Lloyd *v.* Pughe	80
Lockyer, Gregory *v.*	40
London and Provincial Bank *v.* Bogle	54, 102, 113, 130
London and St. Katherine's Docks Co., Attenborough *v.*	123
London, Bombay, and Mediterranean Bank, *Re*	82
London Chartered Bank *v.* Lempriere	25, 26, 30, 31, 34, 50, 60, 72
Londonderry, Gresham *v.*	7
Longlands, Maclean *v.*	80
Lovell *v.* Newton	66
Lowe *v.* Thomas	74

PAGE

Luard's Case 82
Lucas *v.* Lucas 80
Lucas, Smith *v.* 23, 29, 100, 102, 128
Lush, *Re* 10, 35
Lyon, Brenchley *v.* . . 41
— , Green *v.* . . . 35

Maas *v.* Sheffield . . . 19
Macbryde *v.* Eykyn . . . 56
M'Culloch, Barrack *v.* 11, 18, 120
Macdonald, Cooper *v.* 16, 17, 36, 128
M'Dougal, Ashton *v.* . . 7
MacHenry *v.* Davies 26, 27, 60
McIntosh, Duear *v.* . . 123
Mackay, *v.* Douglas . . 90, 131
— , Frank *v.* . . 84
Mackenzie, *Re* 76
Maclean *v.* Longlands . . 80
Macqueen *v.* Turner . . . 58
Maguire, Dowling *v.* . . 22
Mainwaring's Settlement, *Re* . 127
Maloney *v.* Kenedy 37, 39, 40
Manby *v.* Scott . . 25, 70
Mann, Martano *v.* . . . 53
Manning, Mara *v.* . . . 17
Mara *v.* Manning . . . 17
Marsh *v.* Tyrrell . . . 21
Marston *v.* Smith . . . 57
Martano *v.* Mann . . . 53
Martin *v.* Bannister . . 123
— , Cooper *v.* . . . 134
Mason *v.* Mitchell . 66, 70
Massey, *Ex parte* . . . 90
Matthew *v.* Northern Assurance Co. . . . 95, 123
Matthewman's Case 22, 80, 82, 86
Matthews, Hunt *v.* . . 119
— *v.* Whittle 106, 110, 113
May, Croxton *v.* . . . 10

PAGE

Mayd *v.* Field 26, 30, 31, 51
Meads, Taylor *v.* 16, 17, 19, 43
Mellon, Debenham *v.* . . 61
Mellor's Trusts 94
Mercier, Williams *v.* 7, 54, 100
Messenger *v.* Clarke . 12, 120
Mews *v.* Mews . . 9, 65, 80
Middleton, Crofts *v.* . . 17
— , Willoughby *v.* . 128
Middleton's Will, *Re*. . . 74
Midland Railway Co. *v.* Pye 53, 54, 136
Miller, Clerk *v.* . . . 57
— , Tamplin *v.* . . 129
Mitchell, Mason *v.* . . 66, 70
Molyneux's Estate . . . 128
Montolieu, Elibank, L. *v.* . 10
Moore, Conlon *v.* 101, 103, 105, 111, 130
— *v.* Moore . . . 129
— *v.* Robinson . . 97
— *v.* Webster . . . 17
Morgan *v.* Morgan . . 36
— *v.* Swansea, &c. . . 47
Morphew, Beeching *v.* . . 57
Morrell *v.* Cowan . . 26, 60
Morris *v.* Freeman . . . 60
— , Jenner *v.* . . . 62
— , Taunton *v.* . . 11
Mortimer, Bunyan *v.* . 55, 57
Mudge *v.* Adams . . . 37
Muggeridge *v.* Stanton . . 11
Munt *v.* Glynes . . . 127
Murgatroyd's Case . . . 82
Murray *v.* Barlee 26, 27, 51, 60
— *v.* Elibank . . 10
Mynn *v.* Robinson . . . 21

Nagle-Gillman *v.* Christopher 116
National Provincial Bank *v.* Thomas 26, 29, 50, 58, 102

PAGE

Needham *v.* Bremner . . 61
Negus, Hewison *v.* . . . 7, 22
Nelson *v.* Stocker . . . 118
Ness *v.* Angas 82
Newcomen, Urmston *v.* . . 134
Newlands *v.* Paynter . . . 6
Newton, Lovell *v.* . . 66
Nicholay, Bolden *v.* . 26, 31, 51
Nichols *v.* Ward . . . 55
Nicholson *v.* Drury, &c. . . 68
Nixon, Engelback *v.* . 11, 18
Noble *v.* Willock 18, 19, 20, 21, 45
Noel *v.* Noel . . . 53, 55
North, Brown *v.* 53
Northern Assurance Co., Matthew *v.* . . . 95, 123
Norton *v.* Twivil 29, 30, 31, 58

Oakes, Lane *v.* . . 74, 75
O'Dwyer *v.* Geare . . . 41
Ogle, Henry *v.* 10
Ortner *v.* Fitzgibbon . . 58
Osborne, *Re* . . . 52, 54
Ottaway *v.* Hamilton . . 62
Ottway *v.* Wing . . . 57
Outram, Ashworth *v.* 5, 9, 65, 69, 77
Overseers of Birmingham, Coleman *v.* 133
Ovington, Christie *v.* . . 47
Owden *v.* Campbell . . . 52
Owens *v.* Dickenson . 28, 29

Paget *v.* Read . . . 139
Papworth, Allen *v.* . . . 57
Parker *v.* Brooke 6, 15
— , Wake *v.* . . . 52
Partington, Att.-Gen. *v.* . 38

PAGE

Patch *v.* Shore 73
Patrick, Home *v.* . . . 57
Pattrick, Stocken *v.* . . . 62
Pawlet *v.* Delaval . . . 121
Paynter, Newlands *v.* . . 6
Peagrim, Bird *v.* . . 37, 39
Pearse *v.* Pearse . . 9, 65
Pedder, *Re* 76
Penhall, Columbine *v.* . . 90
Penney, Holmes *v.* . 90, 131
Percival, Glazebrook *v.* . . 120
Peters *v.* Cowie . . . 132
— , Hobday *v.* . . 30, 63
— *v.* Lewes, &c. . . 67, 126
Philips, Lavie *v.* . . 28, 64
Phillips *v.* Barnet . 44, 57, 98
Phillipson *v.* Hayter . . 61
Picard *v.* Hine 22
Pickering, Robinson *v.* . 29, 50
Pike, Brownrigg *v.* 21, 37, 41
— *v.* Fitzgibbon 5, 29, 30, 31, 32, 49, 50, 51, 58, 63, 72, 100, 102, 129
Plomer, Steele *v.* . . . 55
Pollard, Cofield *v.* . . . 73
Poole *v.* Canning . . 56, 114
Pooley *v.* Driver . . . 72
Pope, Freeman *v.* 90, 131, 132
Pope's Trusts 12
Pountney, *Re* . . . 38
Price, Thomas *v.* . . . 128
Pride *v.* Bubb 8, 16, 17, 19, 22, 43
Prodgers, Giacometti *v.* . . 11
Proudley *v.* Fielder . . 37, 39
Pugh, *Re* 60
— *v.* Sharman . . 82, 85
— , Taylor *v.* . . . 119
Pughe, Lloyd *v.* . . . 80
Pye, Midland Railway Co. *v.* 53, 54, 136

	PAGE
RAEBURN, Andrew *v.*	118
Rainsdon's Trusts	52
Ramsden *v.* Brearley	52, 97
Read, Paget *v.*	139
— *v.* Royal Exchange, &c.	11, 24, 93
Reg. *v.* Carnatic Ry. Co.	80
— *v.* Houlton	98
Rhodes, *Ex parte*	82
Rich *v.* Cockell	15
Richards *v.* Delbridge	8, 89
—, Harmon *v.*	131-2
Richardson *v.* Dubois	62
Ricketts, Durrant *v.*	40, 58
Roberts *v.* Collett	11
— *v.* Evans	52, 53
— *v.* Watkins	50, 129
Robinson, Moore *v.*	97
—, Mynn *v.*	21
— *v.* Pickering	29, 50
— *v.* Wheelwright	128
Rosher, Headen *v.*	20
Ross *v.* Ewer	41
Routledge, Warne *v.*	22, 58
Rowe, Gardner *v.*	90
Rowley, Appleton *v.*	17, 36
Royal Exchange, &c., Read *v.*	11, 24, 93
Rudge *v.* Weedon	55
ST. GEORGE *v.* Wake	119
Salmon *v.* Hays	41
Sands, Sir George's, Case	37
Sanger *v.* Sanger	63, 100, 101, 128, 130
Saunders, Vine *v.*	59, 101
Scales *v.* Baker	18, 120
Scarborough *v.* Borman	6
Scarisbrick's Case	82
Scott, Manby *v.*	25, 70
Scott *v.* Spashett	10
Schjott *v.* Schjott	52
Sealey *v.* Gaston	51
Shaftesbury, C. of, Eyre *v.*	134
Sharman, Pugh *v.*	82, 85
Sharpe *v.* Foy	35
Shattock *v.* Shattock	30
Shaw, Adair *v.*	137, 138, 139
Sheffield, Maas *v.*	19
Sheil, *Ex parte*	71
Shepperd, *Re*	66, 70
Shipway *v.* Ball	11
Shore, Patch *v.*	73
Slanning *v.* Style	9, 65
Slocombe *v.* Glubb	119-20
Smallpiece *v.* Dawes	61, 65, 70, 78
Smith, *Re*	11
—, Bower *v.*	74
— *v.* Etches	56
— *v.* Lucas	23, 29, 100, 102, 128
—, Marston *v.*	57
— *v.* Smith	59
—, Wagstaff *v.*	18
Snow, Goddard *v.*	68, 119
Soady *v.* Turnbull	138
Sockett *v.* Wray	30
Soutten, Deare *v.*	62
Spashett, Scott *v.*	10
Squib *v.* Wyn	38
Stamford, Heard *v.*	33, 40, 59, 106
Stanley *v.* Stanley	128
Stanton, Muggeridge *v.*	11
Steele *v.* Plomer	55
Stephenson, *Re*	38
Steward *v.* Blakeaway	18, 37
Stillman *v.* Wedeon	73
Stocken *v.* Pattrick	62
Stocker, Nelson *v.*	118
Strangeways, *Ex parte*	56
Strathmore *v.* Bowes	67, 119

PAGE

Stretch, Chubb *v.* . 32, 33, 100, 103, 108, 114, 130
Sturgis *v.* Champneys . . 10
— *v.* Corp . . 18, 20, 43
Style, Slanning *v.* . . . 9, 65
Sutton's Trusts, *Re* . . . 123
Summers *v.* City Bank . 50, 96
Sumner, Johnston *v.* . . . 61
Swann *v.* Swann . . . 52
Swansea Urban, &c., Morgan *v.* 47

Taber, *Re* 128
Tamplin *v.* Miller . . . 129
Taunton *v.* Morris . . . 11
Taylor, Ferner *v.* . . . 10
— *v.* Meads . 16, 17, 19, 43
— *v.* Pugh 119
— *v.* Taylor . . . 57
Teasdale *v.* Braithwaite . . 7, 22
Tee, Lancashire and Yorkshire Bank *v.* 26
Tennant, Hulme *v.* . . . 58
Tharp, *Re* 12
Thomas *v.* Alsop . . . 133
— Heatley *v.* . . . 30
— *v.* Jones 18, 20, 21, 73
— , Lowe *v.* . . . 74
— , Nat. Pro. Bank *v.* 26, 29, 50, 58, 102
— *v.* Price . . . 128
Thompson *v.* Bennett . . 28, 29
— , Heygate *v.* . . 56
— *v.* Webster . . 132
Tinte, Copperthwaite *v.* . . 55
Tomlinson, *Re* . . . 21, 41
— *v.* Bullock 104, 112, 140
Tompson *v.* Webster . . 132
Toovey, Ham *v.* . . . 61
Townshend *v.* Westacott . 91, 131
Trotter, Holcombe *v.* . . 55

PAGE

Troutbeck *v.* Boughey . 16, 19
Tugman *v.* Hopkins . . 41, 90
Tullett *v.* Armstrong 6, 27, 62, 67, 128
Turnbull, Soady *v.* . . 138
Turner, Brook *v.* . . . 19
— , Macqueen *v.* . . 58
— *v.* Turner . . . 52
Turvil, Norton *v.* 29, 30, 31, 58
Tyrer, Follett *v.* . . . 36
Tyrrell, Marsh *v.* . . . 21

Urmston *v.* Newcomen . . 134

Vandersteegen, Vaughan *v.* 24, 26, 30, 34
Vaughan *v.* Vanderstegen . 24, 26, 30, 34
— *v.* Walker . 32, 58
Vine *v.* Saunders . . 59, 101
Voss, King *v.* . . 13, 74, 75

Wagstaff *v.* Smith . . 18
Wainford *v.* Heyl 35, 48, 50, 99, 138
Wake *v.* Parker . . . 52
— , St. George *v.* . . 119
Walker, Allen *v.* . . . 17
— , Vaughan *v.* . 32, 59
Wall, Bishop *v.* . . 20, 45
Wallace *v.* Greenwood . . 52
Walter *v.* Hodge . . . 80
Ward *v.* Nichols . . . 55
Warne *v.* Routledge . . 22, 58
Waterhouse, Hall *v.* 14, 16, 17, 19, 43
Waterlow, Holden *v.* . . 57
Watkins, Roberts *v.* . . 50, 128

	PAGE
Waugh *v.* Wren	56
Webster, Moore *v.*	17
— , Tompson *v.*	132
Wedeon, Stillman *v.*	73
Weedon, Rudge *v.*	55
Wellesley *v.* Wellesley	52
Wells, Hughes *v.*	18, 120
Wensley, *Re*	38
Westacott, Townshend *v.*	91, 131
Wheelwright, Robinson *v.*	128
Whitaker, *Re*	9, 65, 90
White *v.* Cohen	97
— , Grange *v.*	52
Whitley *v.* Honeywell	55
Whittle, Matthews *v.*	106, 110, 113
Whitworth, Crooks *v.*	52
Wickstead, Ellworthy *v.*	11
Willes, Clinton *v.*	24
Willeter *v.* Dobie	40
Williams *v.* Baily	23
— *v.* Mercier	7, 54, 100
Williamson, Hodgson *v.*	29, 32, 58, 61, 100, 101, 136
Willock, Noble *v.*	18, 19, 20, 21, 45
Wills, De Greuchy *v.*	110
Wilson *v.* Ford	62
Wilson, Higginson *v.*	56
Wing, Ottway *v.*	57
Winter *v.* Easum	26
Withey, Ball *v.*	57
Wood *v.* Brown	125
— *v.* Wood	9, 56, 65, 70, 78, 117, 118
Woodhams, Arnold *v.*	35, 138
Woods, *Re*	62
Woodward *v.* Woodward	22, 23, 71
Wooley, Blatchford *v.*	30
Woolston, Jarman *v.*	90
Wordsworth *v.* Dayrell	57
Wornum, *Re*	37
Wray, Sockett *v.*	30
Wren, Waugh *v.*	56
Wright *v.* Cadogan, L.	16, 19
— *v.* Chard	51, 54
— , Clarke *v.*	109
— *v.* Leonard	59
— *v.* Wright	6, 7, 67, 75, 142
Wyborn *v.* Blunt	55
Wyn, Squib *v.*	38
ZEDEN, Laing *v.*	123

THE LAW

OF

MARRIED WOMEN'S PROPERTY.

INTRODUCTION.

Scope of the Introduction.

THE Married Women's Property Act, 1882, (*a*) which came into force on the 1st of January 1883, is the latest and, at any rate for some time to come, the final development of the doctrine of separate use. The result of the cases affecting that doctrine will be concisely given in this Introduction, but it will be convenient first to notice briefly the changes which the Act makes.

Changes effected by the Act of 1882.

The Act of 1882 supersedes and, except as to rights and liabilities accruing under them, repeals (*b*) the Married Women's Property Act 1870 (*c*), and the Married Women's Property Act (1870) Amendment Act, 1874 (*d*). All married women are by the Act of 1882 rendered capable of acquiring, holding, and disposing of any property

(*a*) 45 & 46 Vict. c. 75.
(*b*) Sec. 22.
(*c*) 33 & 34 Vict. c. 93.
(*d*) 37 & 38 Vict. c. 50. The three Acts are hereafter referred to as the Act of 1870, the Act of 1874, and the Act of 1882 respectively.

Introdn. as their separate property, of contracting, with respect to it, and of suing and being sued, as if they were sole (*e*). The contracts of married women are *primâ facie* made on the faith of their separate property, and bind separate property acquired after the date of the contract (*f*). Married women trading separately can be made bankrupt (*g*). The property of a woman marrying after the Act no longer accrues to her husband, but subject to any settlement becomes her separate property (*h*). In case of the husband's bankruptcy, the wife lending money to her husband is postponed to his other creditors (*i*). The execution by a married woman of a general power by will renders the property subject to her debts (*k*). Property, the title to which accrues to a married woman after the Act, becomes her separate property, whether she married before or after the Act, and independently of the nature or value of the property (*l*). Investments standing in the sole name of a married woman at the time of the commencement of the Act, or transferred into her sole name afterwards, are her separate property until the contrary is shown (*m*). And the same rule applies to her interest in any investments standing in, or transferred into her name jointly with

(*e*) Sec. 1, sub-ss. (1), (2).
(*f*) Sec. 1, sub-ss. (3), (4).
(*g*) Sec. 1, sub-s. (5).
(*h*) Sec. 2.
(*i*) Sec. 3.
(*k*) Sec. 4.
(*l*) Secs. 2, 5.
(*m*) Secs. 6, 7.

any person other than her husband (*n*), and her husband need not join in the transfer of any such investments (*o*). The wife may settle policies effected on her life in the same manner as the husband might do under the Act of 1870 (*p*). The wife has the same civil remedies for the protection of her property against all persons, including her husband, and the same criminal remedies against all persons, except her husband, as if she were a *feme sole* (*q*). Husband and wife may only take criminal proceedings against each other for the protection of their property, and only where they are living apart (*r*). The separate estate of a married woman is now liable for her breaches of trust, devastavits and torts, whether ante-nuptial or committed during coverture (*s*). A married woman who is a legal personal representative or trustee may transfer investments without her husband, who will not be responsible for her acts in those capacities if he does not intermeddle (*t*). The legal personal representative of a married woman is in the same position as the married woman herself (*u*). The Act does not lessen the advisability of marriage settlements, nor touch any restraint on anticipation (*v*).

(*n*) Sec. 8.
(*o*) Sec. 9.
(*p*) Sec. 11.
(*q*) Sec. 12.
(*r*) Secs. 12, 16.
(*s*) Sec. 1, sub-s. (2), and secs. 13, 24.
(*t*) Secs. 18, 24.
(*u*) Sec. 23.
(*v*) Sec. 19, see notes (*a*), (*b*), pp. 126–7.

Introdn.

The Act founded on the doctrine of separate use.

It is evident, even from the short analysis of the Act of 1882 just given, that it cannot be applied without reference to the doctrine of separate use. The course which English law has taken with regard to married women is somewhat peculiar. The ancient customary law unlike that of other countries merged the wife's existence in the husband, and her property became on marriage more or less completely his. The earliest modification of the common law was allowed in a contract made on separation with the intervention of a trustee. But it was on the marriage contract that the doctrine of separate use arose. The husband having excluded himself by contract was not allowed to interfere with the property of his wife. Another peculiarity of English law was the use it made of the doctrine of trusts. By means of a trust for the separate use of the wife the husband might be excluded not only by his own act, but by that of another. A stranger by giving property in trust for the separate use of a married woman might altogether annihilate the common law rights of the husband in such property. This doctrine was further extended by the decision that, if property was given to her separate use and no express trustee was appointed, the husband was trustee for his wife (*x*). He was thus compelled to protect his wife

(*x*) *Bennet* v. *Davis*, 2 P. Wms, 316. For the history of the Law see Mr. Kenny's "Effects of Marriage on Property."

against himself. But under the Act of 1870, and especially under the Act of 1882, the separate use has become rather a legal status than an equitable trust (*y*). Introdn.

At common law the husband by the act of marriage became entitled to an estate of the freehold in his wife's real property during the coverture, whether acquired before or during coverture, and she could not deal with her interest in it without his concurrence. He became entitled to her chattels real in possession or reversion *jure mariti*, though they survived to her if he died without having aliened them. He was absolutely entitled to her personal property in possession, or falling into possession during coverture, and to her choses in action if he reduced them into possession; and if he survived her, he or his administrator, on taking out administration to the wife, was entitled to recover. But if she survived, and they had not been reduced into possession, they were hers. Husband's rights at common law.

To remedy this state of things the Court of Chancery "invented that blessed word and thing, the separate use of a married woman" (*z*). The doctrine of separate use is a perfect example of judge-made law. Even down to the present time the judges have been half-unwillingly modifying and The doctrine of separate use.

(*y*) Act of 1882, sec. 1, esp. sub-s. (2) and (4); but see *Pike* v. *Fitzgibbon*, 17 C. D. 454.

(*z*) L. J. James in *Ashworth* v. *Outram*, 5 C. D. at p. 941.

Introdn. consolidating it, and it is quite possible that further changes will be made in it by the interpretation put on the Act of 1882. It is proposed to give a sketch of it as it now stands in the following order.

1. The acquisition and disposition of separate property.

2. The power of contract and extent of liability of married women in respect to it, p. 21.

3. The devolution of it after death, p. 36.

The acquisition of separate property.

1. *The acquisition and disposition of separate property.* A trust for the separate use of a married woman can be created as follows:

(A) By declaration of trust or contract.

A. By the declaration of a trust of any property for her separate use. As to what words will create a trust for the separate use, see Lewin on Trusts, 7th ed. 644, and the cases there collected. The trust may be created by an instrument taking effect while the woman is single, and in that case the trust will arise on marriage (*a*), but not if the property has been dealt with by the woman so as to negative the idea of a continuing trust (*b*). There need not be any express trustee; for, the husband shall be construed trustee for the wife (*c*). It may also be created by contract

(*a*) *Tullett* v. *Armstrong*, 4 M. & C. 390; *Scarborough* v. *Borman*, *ib.*, 377.

(*b*) *Wright* v. *Wright*, 2 J. & H. 647.

(*c*) *Bennet* v. *Davis*, 2 P. W. 316; *Parker* v. *Brooke*, 9 Ves. 583; *Newlands* v. *Paynter*, 10 Sim. 377; 4 My. & C. 408.

with the husband before marriage, or by the gift of a stranger during marriage (*d*), and a trust for the separate use will arise on every successive marriage as long as the property remains subject to the trust (*e*). But of course a single woman can deal with property, on which a trust for her separate use would arise on her marrying, like any other property; and so where a fund was given to an unmarried woman for her separate use without a trustee, and she sold out the fund and invested it in another form, and then married, the separate use was held to have been destroyed (*f*). A fund may be settled to the separate use of a woman during a particular marriage only, and it is sometimes a question whether the intention was to exclude a particular husband, or every husband whom she might marry (*g*) from his rights in her property. Introdn.

B. By dealings with her husband after marriage. A married woman can contract with her husband, and can therefore acquire property from him by contract for her separate use (*h*), and she can obtain (B) By dealings with husband during marriage.

(*d*) *Graham* v. *Londonderry*, 3 Atk. 393. Wedding presents to the wife were decided by Lord Coleridge to be the husband's. *Williams* v. *Mercier*, *Times*, 16th Feb. 1882; 9 Q. B. D. 337, in C. A., where the point was not decided. But see 1 Bright's Husband & Wife, 289.

(*e*) *Ashton* v. *M'Dougall*, 5 Beavan, 56; *Re Gaffee*, 7 Hare, 101.

(*f*) *Wright* v. *Wright*, 2 J. & H. 647.

(*g*) See the cases collected in Lewin, 7th ed. p. 646.

(*h*) *Hewison* v. *Negus*, 16 Bea. 594, aff. 17 Jur. 567; *Teasdal*

Introdn

dominion over her reversionary real estate by contract with him without any acknowledgment under the Fines and Recoveries Act (*i*); and he could always make gifts to her by declaring himself a trustee for her separate use (*k*). But no effect could be given to the clearest direct gift from husband to wife by delivery or assignment, because the husband and wife are one person at law, and there could be no transfer between them (*l*). And it is questionable whether the Act enables the husband to transfer to his wife. The Act gives the wife power to acquire any real or personal property as her separate property, in the same manner as if she were a *feme sole* (*m*), and there is nothing in the words of the Act to exclude her acquiring it from her husband. If it should be held that he cannot under the Act transfer property to her like a stranger, he could still only transfer leaseholds and other personal property, whether in possession or not, by declaring himself a trustee for her. But by the Conveyancing Act, 1881 (*n*), freehold land or a thing in action may be conveyed by a husband to his wife, and by a wife to her husband, alone or jointly with another

v. *Braithwaite*, 4 C. D. 85; 5 C. D. 630; *Foster* v. *Lister* (M. R.), 25 W. R. 553.

(*i*) *Pride* v. *Bubb*, 7 Ch. 64.

(*k*) *Grant* v. *Grant*, 34 Bea. 623.

(*l*) *Baddeley* v. *Baddeley*, 9 C. D. 113; *In re Breton*, 17 C. D. 416; but see *Richards* v. *Delbridge*, L. R. 18 Eq. 11; *Fox* v. *Hawkes*, 13 C. D. 822.

(*m*) Sec. 1, sub-s. (1), see note (*a*), p. 44.

(*n*) 44 & 45 Vict. c. 41, s. 50. App. 157.

person, by the like means by which it might have been conveyed by him or her to another person. Following the rule in other cases, the wife's evidence alone will not, after the death of the husband be sufficient to establish a gift, but it must be supported by other evidence or circumstances to show a clear intention on the part of the husband (*o*). Money placed by the husband at a bank in the wife's name, on which she drew by cheque, was held to be the husband's, in the absence of any express declaration by him that he intended it as a gift to the wife (*p*). But if a husband invest money in the name of himself and his wife, or himself, his wife, and trustees, it is not a gift to the separate use of the wife, but only an advancement (*q*). A husband can, even outside the Act of 1870, make a business the separate business of his wife, by acquiescing in her carrying it on separately (*r*). Introdn.

c. The married woman could also, until the commencement of the Act of 1882, acquire separate property by enforcing her equity to a settlement. This right arose out of the doctrine that he who (o) By her equity to a settlement.

(*o*) *Grant* v. *Grant*, 34 Bea. 623; see also *In re Finch*, *Finch* v. *Finch*, *Times*, 15 June, 1882, and 17 July, 1882; Kay, J., *Re Whitaker*, W. N. (1882) 71.

(*p*) *Mews* v. *Mews*, 15 Bea. 529.

(*q*) *Re Eykyn*, 6 C. D. 115.

(*r*) *Ashworth* v. *Outram*, 5 C. D. 923; *Slanning* v. *Style*, 3 P. Wms. 334; *Calmady* v. *Calmady*, 2 Ves. Jr. 568; *Cecil* v. *Juxon*, 1 Atk. 278; *Green* v. *Green*, 5 Ha. 400 n.; *England* v. *Downs*, 6 Bea. 269; *Wood* v. *Wood*, 19 W. R. 1049; *Pearse* v. *Pearse*, W. N. (1877) 120.

Introdn. seeks equity must do equity. Where the husband applied to the Court of Chancery for property coming to him in right of his wife during coverture, the Court compelled him to settle a part of it on his wife and her children. Though this right originally arose in the suit of the husband (*s*), it was long ago settled that the wife could take proceedings to enforce it against her husband and his creditors (*t*). A part (*u*), or, in case of the misconduct of the husband, or if he was a bankrupt, the whole (*x*), of the property was settled on the wife (*y*). But she never could take more than a life interest in the property, and the husband, whatever his conduct might have been, took the ultimate remainder in default of her issue, whether he survived her or not (*z*). And her equity to a settlement was subject to her ante-nuptial debts paid by the husband, or still owing (*a*), and could be defeated by her fraud (*b*), and waived by her consent, when separately examined, to payment to her husband (*c*),

(*s*) *Sturgis* v. *Champneys*, 5 My. & C. 97, at p. 102.

(*t*) *L. Elibank* v. *Montolieu*, 5 Ves. 737.

(*u*) Cases collected in Seton, p. 680.

(*x*) Seton, p. 680.

(*y*) *Henry* v. *Ogle*, 1 Coop. t. Cott. 447; *Scott* v. *Spashett*, 3 M. and G. 599; *Beresford* v. *Hobson*, 1 Madd. 362; *Burdon* v. *Dean*, 2 Ves. Jun. 607.

(*z*) *Croxton* v. *May*, L. R. 9 Eq. 404.

(*a*) *Bonner* v. *Bonner*, 17 Bea. 86; *Barnard* v. *Ford*, L. R. 4 Ch. 247.

(*b*) *Re Lush*, L. R. 4 Ch. 591.

(*c*) *Ferner* v. *Taylor*, 2 Russ. & M., 190; *Murray* v. *L. Elibank*, 10 Ves. 84.

but a married infant could not waive her equity (*d*). A married woman was entitled to her equity out of a life interest (*e*). Where the sum was under £200, it was generally paid out without any separate examination (*f*). The Court had a discretion, and might refuse a settlement where the wife had an ample fortune, and the husband had been shabbily treated (*g*), and the adultery of the wife barred her right (*h*). The equity to a settlement is rendered obsolete by the Act of 1882. No property can, after its commencement, accrue to the husband in right of his wife; for all property the title to which accrues to her after the commencement of the Act, is her separate property (*i*).

(D) Her savings.

D. The savings of her separate property belong to a married woman for her separate use (*k*); but her savings out of money given to her by her husband for household purposes are not hers but the husband's (*l*). She could insure her husband's life before the Act of 1870 (*m*).

(*d*) *Shipway* v. *Ball*, 16 C. D. 376.

(*e*) *Taunton* v. *Morris*, 8 C. D. 453.

(*f*) *Elsworthy* v. *Wickstead*, 1 J. and W. 69; *Roberts* v. *Collett*, 1 Sm. and G. 138.

(*g*) *Giacometti* v. *Prodgers*, L. R. 14 Eq. 253; 8 Ch. 338.

(*h*) *Carr* v. *Eastabrooke*, 4 Ves. 146; *Duncan* v. *Campbell*, 12 Sim. 616; but see *Re Lewin's Trust*, 20 Bea. 378.

(*i*) Secs. 2, 5.

(*k*) *Gore* v. *Knight*, 2 Vern. 535; *Muggeridge* v. *Stanton*, 1 De G. F. and J. 107; *Duncan* v. *Cashin*, L. R. 10 C. P. 554; *Engelback* v. *Nixon*, *Ib.* 645; *Re Smith*, 4 Jur. N. S. 1193, 1 Sw. & Tr. 125.

(*l*) *Barrack* v. *Macculloch*, 3 K & J. 110; *Brooke* v. *Brooke*, 25 Bea. 347.

(*m*) *Read* v. *Royal Exchange*, *&c.*, Peeke's Add. Ca. 70.

Introdn.

(E) Separate property acquired by desertion, &c.

E. By desertion, or a separation under a deed or otherwise. A married woman deserted by her husband holds her property acquired in business, with or without his acquiescence, to her separate use (*n*); and money is paid out of court to a deserted wife as if she were sole (*o*). The savings of a wife living apart by consent on an allowance voluntarily made by the husband are held to her separate use (*p*). And by 20 & 21 Vict. c. 85, ss. 21, 25 (*q*), a wife who has obtained a protection order or a judicial separation holds all property which she may acquire or which may come to or devolve upon her after the order or sentence as a *femé sole*. But, of course, no such order could include property accruing to her husband on marriage, though unclaimed by him (*r*). The savings of the wife of a lunatic living apart from him, out of an allowance made by an order in lunacy, are her separate property (*s*).

(F) Acquired under the Married Women's Property Acts.

F. The Married Women's Property Acts have created various new modes of acquiring separate property. Any wages, earnings, money or property gained or acquired by any married woman in any employment, occupation or trade, in which she is

(*n*) *Cecil* v. *Juxon*, 1 Atk. 278.

(*o*) *Re Pope's Trusts*, 21 W. R. 646; W. N. (73) 79.

(*p*) *Brooke* v. *Brooke*, 25 Bea. 342; *Messenger* v. *Clarke*, 5 Exch. 388.

(*q*) App. p. 153.

(*r*) *Kingsman* v. *Kingsman*, 6 Q. B. D. 122.

(*s*) *In the goods of Tharp*, 3 P. D. 76.

engaged or which she carries on separately from her husband, or by the exercise of any literary, artistic or scientific skill, have been her separate property since the Act of 1870 (*t*), and a married woman can insure her own or her husband's life to her separate use under both Acts (*u*). Property coming during marriage to a woman married since the Act of 1870, and while that Act was in force, as the next of kin of an intestate, whatever its nature or value (*x*), and any sum of money not exceeding £200 given to such woman during the same period by any deed or will (*y*), and the rents and profits of any freehold, copyhold or customary-hold property, which descended upon such woman during the same period as heiress or co-heiress of an intestate, belong to her for her separate use (*z*). Property of whatever kind, the title to which accrued since the Act of 1882, to a woman married before the Act, is her separate property (*a*). The property of women married since the Act of 1882, whether belonging to them at the time of marriage, or ac- Introdn.

(*t*) Act of 1870, sec. 1, App. p. 141; Act of 1882, secs. 2, 5, and see notes to sec. 2, p. 66, and sec. 5, p. 73.

(*u*) Act of 1870, sec. 10, App. p. 147; Act of 1882, sec. 11, and see notes to sec. 11, p. 93.

(*x*) *King* v. *Voss*, 13 C. D. 504; Act of 1870, sec. 7, App. p. 145.

(*y*) Act of 1870, sec. 7, App. p. 145; see note to sec. 5, p. 73.

(*z*) Act of 1870, sec. 8, App. p. 146; and see note to sec. 5, p. 73.

(*a*) Act of 1882, sec. 5, see note (*a*) p. 73.

Introdn. quired by or devolving upon them afterwards, is held by them as their separate property (*b*).

The legal estate in separate real estate, created by the Acts.

The separate property created by the Acts of 1870 and 1882 is held under the same rules of equity as separate property created independently of those Acts, except where the rules of equity have been modified by the Acts themselves. It is a question which has not been decided, whether,

Under the Act of 1870.

under the Act of 1870, the legal estate in real property could vest in the married woman for her separate use (*c*). If she invested savings in real estate under section 1, the real estate would be deemed and taken to be "property held and *settled* to her separate use," and it is submitted that she could only convey the legal fee by means of an acknowledgment under 3 & 4 Will. IV. c. 74 (*d*). It is conceivable, however, that a distinction might be drawn between the language of section 1 and that of section 8 of the Act of 1870 (*e*); and that a married woman might be held capable of disposing of the legal estate in property descending to her under section 8 as her separate property without acknowledgment. It is certain that, outside the Acts of

(*b*) Act of 1882, sec. 2; see note (*a*) p. 66.

(*c*) As to personal estate, see note (*y*), p. 18.

(*d*) *Hall* v. *Waterhouse*, 5 Giff. 64. The Fines and Recoveries Act has now been amended by the Conveyancing Act, 1882; 45 & 46 Vict. c. 39, s. 7, see App. p. 158.

(*e*) App. pp. 141, 146.

1870 and 1882, the separate use only attaches to the equitable estate, and the legal estate remains in some person as a trustee for the married woman. If there is no other trustee the legal ownership vests in her husband (*f*). But it is submitted that under the Act of 1882 (*g*), the legal estate vests directly in the married woman, and that the words "without the intervention of any trustee" in section 1 sub-section (1), will prevent her husband taking any interest, at law or in equity, in the property coming to her under the Act. It will be a question open to some doubt whether he will, or will not, take the legal estate in real property, conveyed since the Act, to the separate use of a married woman without a trustee, and whether the married woman can in such a case dispose of the legal estate without acknowledgment (*h*). But the more reasonable construction would be to put all her separate property, of which the legal estate was not vested in trustees, upon the same basis, and to hold that she takes the legal estate or ownership to her separate use, whether the property belongs to her at the time of marriage or devolves upon her afterwards, under sections 2 or 5, or is conveyed to her absolutely, or to her separate use. In case it is

Introdn.

Under the Act of 1882.

(*f*) *Bennet* v. *Davis*, 2 P. Wms. 316; *Rich* v. *Cockell*, 9 Ves. 369, 375; *Parker* v. *Brooke*, 9 Ves. 583.

(*g*) Act of 1882, sec. 1, sub-s. (1), secs. 2, 5, pp. 42, 66, 73.

(*h*) See further on this question, note (*a*) to sec. 1, sub-s. (1), p. 43, and note (*a*) to sec. 19, p. 126.

Introdn. so held, the married woman will be able to dispose of all her separate property without acknowledgment, and her husband will no longer have any interest in the property at law (*i*). As to the new species of property thus created by the Act, a married woman will be treated as a *feme sole* both at law and in equity; but it is presumed that the rules of equity as to separate property will be held to apply to it. The Act does not affect property held by trustees for the separate use of the married woman (*k*), nor property acquired before the commencement of the Act. So that there will be a large amount of separate property which by settlement or otherwise will remain outside the Act in this respect, and of which only the equitable estate will be vested in the married woman.

Real estate held by a married woman in equity.

Outside the Acts a married woman may in equity acquire, hold, and dispose of, by will or *inter vivos*, real estate if it is settled to her separate use (*l*). She cannot deal with the legal estate (*m*); but if there is no trustee, her husband or her heir, according as they take the legal interest, hold it in trust for her or her assigns, that is to say, her husband during

(*i*) Sec. 1, sub-s. (1), and secs. 2 and 5 of the Act of 1882; see notes to Act, pp. 66, 75.

(*k*) Act of 1882, sec. 19, note (*a*), p. 126.

(*l*) *Taylor* v. *Meads*, 4 D. J. & S. 597; *Hall* v. *Waterhouse*, 5 Gif. 64; *Pride* v. *Bubb*, 7 Ch. 64; *Troutbeck* v. *Boughey*, L. R. 2 Eq. 534; *Cooper* v. *Macdonald*, 7 C. D. 288.

(*m*) *Wright* v. *Ld. Cadogan*, 2 Ed. 239; *Churchill* v. *Dibbey*, 9 Sim. 447 n.; *George* v. *Jew*, Amb. 627.

the coverture, and her heir upon the trusts of her will or other disposition of the reversion (*n*). She can dispose of her reversionary interest in real estate, if her husband has contracted with her that such interest shall be held to her separate use, without having recourse to the Fines and Recoveries Act (*o*), and of her contingent remainder, but only for value (*p*); but she cannot deal with contingencies where the separate use arises on the contingency (*q*). She can demise land held to her separate use at law (*r*). The separate use does not necessarily attach to the corpus of the real estate, but may attach to that or any smaller interest in land (*s*). A common way of limiting real estate to a married woman is to give her the life estate for her separate use, followed by a general power of appointment. As to the effect of this, in rendering the corpus of the property liable for her general engagements, see *infra*, p. 30. The husband is only entitled to his curtesy out of real estate, settled to his wife's separate use, in the absence of a disposition by her (*t*). If the husband

Introdn.

(*n*) *Hall* v. *Waterhouse*, 5 Gif. 64; *Taylor* v. *Meads*, 4 D. J. & S. 597.

(*o*) Amended by Conveyancing Act, 1882, sec. 7, see App. p. 158; *Pride* v. *Bubb*, 7 Ch. 64.

(*p*) *Crofts* v. *Middleton*, 8 De G. M. & G. 192.

(*q*) *Mara* v. *Manning*, 8 Ir. Eq. 218 (Ld. St. Leonards); *Bestall* v. *Bunbury*, 13 Ir. Ch. 318, 549.

(*r*) *Allen* v. *Walker*, L. R. 5 Ex. 187.

(*s*) *Taylor* v. *Meads*, 4 D. J. & S. 597.

(*t*) *Appleton* v. *Rowley*, L. R. 8 Eq. 139; *Cooper* v. *Macdonald*, (C. A.) 7 C. D. 288; over-ruling *Moore* v. *Webster*, L. R. 3 Eq. 267.

Introdn. purchase real estate with his wife's separate property, he is her trustee, or agent, or a debtor to her estate, according to circumstances (*u*). The improvements made by the husband in his wife's separate property in land enure to her separate use (*v*), and savings of her separate property invested in land go to her heirs (*w*), and not to the husband administrator.

Personal estate. The trust for the separate use of a married woman in personal property has been recognised in interpleader at common law (*x*), and it is presumed that her separate property would, since the Judicature Act, be recognised at law as well as in equity, at any rate in an action brought under the Act of 1882. In respect to personal property held to her separate use, a married woman can hold it and dispose of it as a *feme sole* (*y*).

Will of separate property. Before the Wills Act a married woman could only make a will as an executrix for the purpose of continuing the representation to her testator, or a will of personalty with the consent of her husband, or under a power (*z*). She was prevented from making

(*u*) *Scales* v. *Baker*, 28 Bea. 91; *Darkin* v. *Darkin*, 17 Bea. 578; *Hughes* v. *Wells*, 9 Hare, 749.

(*v*) *Barrack* v. *M'Culloch*, 3 K. & J. 110, 120.

(*w*) *Steward* v. *Blakeaway*, L. R. 6 Eq. 479, 4 Ch. 603.

(*x*) *Duncan* v. *Cashin*, L. R. 10 C. P. 554; *Engelbach* v. *Nixon*, L. R. 10 C. P. 645.

(*y*) *Wagstaff* v. *Smith*, 9 Ves. 520; *Fettiplace* v. *Gorges*, 1 Ves. Jr. 46, 3 Bro. C. C. 8; *In the goods of Smith*, 1 Sw. & T. 125; *Sturgis* v. *Corp*, 13 Ves. 190; *Lechmere* v. *Brotheridge*, 32 Bea. 353.

(*z*) *Noble* v. *Willock*, L. R. 7 H. L. 580; *Thomas* v. *Jones*, 1 D. J. & S. 63.

a will of lands by 34 & 35 Henry VIII. c. 5, s. 14. But she could dispose of her separate estate by will, though only in equity (*a*), and whether the legal estate were vested in trustees for her or not (*b*). And the 8th section of the Wills Act provided that no will of a married woman should be valid, except such a will as might have been made by a married woman before the passing of that Act. But now by section 1 of the Act of 1882, sub-section (1), she is given power to dispose of her separate property by will as if she were a *feme sole*. A will of personalty made with the assent of her husband is not valid unless he survive her, for his assent must be given by allowing the will to be proved (*c*). He can retract his assent after her death at any time before probate (*d*), though if he has once assented after her death he is bound (*e*); and where he was executor, and expressed an intention of proving, but died before probate, he was held to have assented (*f*). A married woman cannot, outside the Act of 1882, dispose of the legal fee in real property because of the statute of Henry VIII. (*g*), but her direction in her

Introdn.

(*a*) *Fettiplace* v. *Gorges*, 1 Ves. Jun. 46; *Pride* v. *Bubb*, 7 Ch. 64; *Taylor* v. *Meads*, 4 D. J. S. 597; *Troutbeck* v. *Boughey*, L. R. 2 Eq. 534.

(*b*) *Hall* v. *Waterhouse*, 5 Giff. 64.

(*c*) *Noble* v. *Willock*, L. R. 7 H. L. 580; 1 Rop. Hus. & W. 170.

(*d*) *Brook* v. *Turner*, 1 Mod. 211, 2 Mod. 170.

(*e*) *Maas* v. *Sheffield*, 1 Robert. 364, 10 Jur. 417.

(*f*) *In the goods of Cooper*, 6 P. D. 34.

(*g*) *Wright* v. *Lord Cadogan*,

Introdn. will operates upon the conscience of the person having the legal estate. She can dispose of her separate personal estate whether in possession (*h*) or in reversion (*i*). She could not, before the Act of 1882, even in equity, dispose of contingent interests in realty, except for valuable consideration (*j*), and therefore not by will. Although the Wills Act (*k*) gives a married woman no greater capacity to make a will than she had before, yet her will when valid will have the benefit of the more liberal rules of interpretation prescribed by that Act (*l*). The fact that the 24th section of the Wills Act makes the will speak from the death, will give no validity to the will of a married woman made during coverture, for the purpose of passing property acquired after her husband's death (*m*). But a will of separate estate, made during the life of the husband, is not affected by his death, but will pass all the property, which can be traced as having been held to the separate use of the testatrix during coverture (*n*). And for the purposes of a power of

2 Ed. 239, 1 B. Par. C. 456; *Churchill* v. *Dibbey*, 9 Sim. 447 n.; *George* v. *Jew*, Amb. 627, copyholds.

(*h*) *Fettiplace* v. *Gorges*, 3 Bro. C. C. 8, 1 Ves. J. 46.

(*i*) *Sturgis* v. *Corp*, 13 Ves. 190; *Headen* v. *Rosher*, 1 M'Cl. & Yo. 89; 2 Rop. Hus. & W. 184.

(*j*) *Crofts* v. *Middleton*, 5 D. M. & G. 192.

(*k*) 7 W. IV. & 1 Vict. c. 26.

(*l*) *Thomas* v. *Jones*, 1 D. J. & S. 63; *Noble* v. *Willock*, L. R. 7 H. L. 580.

(*m*) *Noble* v. *Willock*, L. R. 7 H. L. 580.

(*n*) *Bishop* v. *Wall*, 3 C. D. 194.

appointment the will speaks from the death (*o*). The distinction between the doctrine of *Thomas* v. *Jones* (*o*), and that of *Noble* v. *Willock* (*p*), which is rather fine, appears to be, that for the purposes of section 24, the testatrix must be looked upon as a *married woman* executing the instrument immediately before her death, and passing thereby everything of which at the time of her death she had acquired the power of disposing. So the testatrix in *Thomas* v. *Jones* would have been capable of exercising the power of appointment at the time of her death, if she had been then a married woman, but the testatrix in *Willock* v. *Noble* would not have been capable of disposing of the property in question, if she had been a married woman at the time of her death. And the will of a married woman, made during coverture under a power, disposing of realty only, is not entitled to probate, though there is an appointment of executors (*q*), *secus* as to will of a *feme sole* (*r*). The will of a married woman can of course be upset on the ground of her husband's undue influence (*s*). Introdn.

2. *Contract and Liability.*—A married woman could, before the Act of 1882, contract for most A married woman can contract in respect of her separate property.

(*o*) *Thomas* v. *Jones*, 1 D. J. & S. 63.
(*p*) L. R. 7 H. L. 580.
(*q*) *In the goods of Tomlinson*, 6 P. D. 209. *Brownrigg* v. *Pike*, 7 P. D. 61.
(*r*) *In the goods of Jordan*, 1 P. & M. 555.
(*s*) *Marsh* v. *Tyrrell*, 2 Hagg. 84; *Mynn* v. *Robinson*, 2 Hagg. 179.

Introdn.

purposes in respect to her separate estate. Specific performance could be enforced against her, and in her favour (*t*). She was bound by part performance (*u*). She could be partner (*v*), or a member of a joint-stock company, if there was nothing to prevent her in the deed of settlement (*x*). She could be compelled to indemnify a trustee purchasing shares at her request (*y*), and the acts of her agent bound her (*z*). But she could not, before the Conveyancing Act, 1881, execute a power of attorney (*a*). She could contract with her husband with respect to her separate property (*b*), or any property to which she had a right independently of him, as, for instance, her reversionary real estate; and post-nuptial settlements dealing with such property are not void under 27 Eliz. c. 4, where any consideration moves from the husband (*c*). And where a married woman was in litigation with her husband, and at arm's length from him, she

(*t*) *Picard* v. *Hine*, L. R. 5 Ch. 274; *Pride* v. *Bubb*, L. R. 7 Ch. 64; *Warne* v. *Routledge*, L. R. 18 Eq. 497; *Dowling* v. *Maguire*, Ll. & Goo. Ca. t. P. 1.

(*u*) *Gaston* v. *Frankum*, 2 De G. & Sm. 561.

(*v*) Lindley on Partp. I. 85.

(*x*) *Mrs. Matthewman's Case*, L. R. 3 Eq. 781.

(*y*) *Butler* v. *Cumpston*, L. R. 7 Eq. 16.

(*z*) *Gaston* v. *Frankum*, 2 De G. & Sm. 561.

(*a*) 44 & 45 Vict. c. 41, s. 40, App. p. 157.

(*b*) *Woodward* v. *Woodward*, 3 D. J. & S. 672.

(*c*) *Hewison* v. *Negus*, 16 Bea. 594; 17 Jur. 567; *Foster* v. *Lister* (M. R.), 25 W. R. 553; *Teasdale* v. *Braithwaite*, 4 C. D. 85, 5 C. D. 630.

was bound by her submission to arbitration (*d*). She can be put to her election during coverture, and her election will bind her (*e*); but she cannot bind her after-acquired property, nor, would it seem, be put to her election where she is restrained from anticipation (*f*). She can lend money to her husband (*g*), but, if she does so since the Act of 1882 she will be liable to be postponed to the rest of the creditors in case of his bankruptcy (*h*). Under the Act of 1882 she can invest her separate property in her sole name (*i*), or jointly with other persons (*k*), and hold the legal property in it (*l*), and transfer it without the concurrence of her husband, as if she were a *feme sole* (*m*), and she is able to deal with trust funds in the same way (*n*). All investments, which were standing in her name at the commencement of the Act, are to be deemed her separate property until the contrary is proved; and so, with respect to them, she will be in the same position as she is with respect to investments made under the Act (*o*). As to her investments under the Act of 1870, see note to section 6, p. 84. The power to effect policies on her own or her husband's life, which she had under

(*d*) *Williams* v. *Baily*, L. R. 2 Eq. 731, at p. 734.
(*e*) *Barrow* v. *Barrow*, 5 D. M. & G. 782.
(*f*) *Smith* v. *Lucas*, 18 C. D. at p. 545.
(*g*) *Woodward* v. *Woodward*, 3 D. J. & S. 672.
(*h*) Sec. 3 of Act of 1882, and see note, p. 71.
(*i*) Act of 1882, sec. 7.
(*k*) Act of 1882, sec. 8.
(*l*) Act of 1882, sec. 1 (1).
(*m*) Act of 1882, sec. 9.
(*n*) Act of 1882, sec. 18.
(*o*) Act of 1882, sec. 6.

Introdn. the Act of 1870 (*p*), and before (*q*), is confirmed by the Act of 1882 (*r*), and she may now settle the policy by a trust upon the face of it for the benefit of her husband or children (*r*).

Liability of separate estate for general engagements.

The liability of a married woman on her contracts was for a long time in great dispute. At one time she was held incapable of contracting debts at all. The first encroachment on this doctrine was, when she was held capable of binding her separate estate by a solemn engagement in writing, as by a bond or promissory note, and ultimately by any written instrument. The courts refused to extend the doctrine to the case of a verbal agreement, or common assumpsit, and even those more formal engagements, which they did hold to be binding upon the separate estate, were not for a long time regarded as debts. At one time they were considered as appointments, at another as charges (*s*). A married woman's engagements binding on her separate property were settled to be debts by the case of *Clinton* v. *Willes* (*t*). A further step was comparatively lately taken by the judgment of L. J. Turner in *Johnson* v. *Gallagher* (*u*), which, although the greater part of it

(*p*) Sec. 10, App., p. 147.

(*q*) *Read* v. *Royal Exchange, &c.*, Peake, Add. Ca. 70.

(*r*) Act of 1882, sec. 11, note (*a*), p. 93.

(*s*) For the history of the doctrine of liability, see the judgment of V.-C. Kindersley in *Vaughan* v. *Vanderstegen*, 2 Drew. 165, 179. As to restraint on anticipation see note (*b*) to sec. 19, p. 127.

(*t*) Sugden on Powers, Ed. 1861, p. 173.

(*u*) 3 D. F. & J., 494, 514.

consisted of *obiter dicta*, is now looked upon as the leading authority on the subject. It was there laid down that, not only the bonds and bills of a married woman, but also her general engagements may affect her separate property. But it could only be rendered liable by an engagement made with reference to it, and on the faith of it (*x*). And it was for the creditor to show that the married woman intended to "contract so as to make herself, that is to say, her separate property the debtor" (*y*). But by the Act of 1882 the onus is thrown on the married woman, and to get rid of her liability she must prove that the contract was not made with respect to and to bind her separate property (*z*). Whether it was so, or no, is a question of fact (*a*). Introdn.

Before the Act of 1882 an intention to bind her separate property was presumed in certain circumstances: I. Where the married woman was living apart from her husband (*b*). A woman living with her husband has under ordinary circumstances authority to pledge his credit to a certain extent (*c*), and therefore to that extent she would not have been presumed to have made an engagement binding on

An intention to bind separate property presumed in certain cases.

(*x*) *Johnson* v. *Gallagher*, 3 D. F. & J., at p. 515.

(*y*) *London Chartered Bank* v. *Lempriere*, 4 P. C. 572, at p. 597.

(*z*) Act of 1882, sec. 1, subs. (3), see note at p. 60.

(*a*) *Johnson* v. *Gallagher*, 3 D. F. & J., 494, 515.

(*b*) Ib., p. 515.

(*c*) *Manby* v. *Scott*, Smith, L. C.; and as to probable result of the Act of 1882, see note (*b*), sec. 1, sub-s. (2), pp. 48, 50, and note to sec. 1, sub-s. (3), p. 60.

Introdn. her separate property. But if, either because she is living apart from her husband, or from other circumstances, she has no authority to pledge her husband's credit, it would have been presumed that she intended to bind her separate property even for necessaries (*d*). II. Where the action of the married woman would have been objectless, unless she meant to bind her separate estate, as where she joins her husband in a written instrument or gives a guarantee for him (*e*). III. A married woman was held liable under the following circumstances before the Act of 1882. Where she held herself out as a single woman (*f*); where she employed a solicitor on business connected with her separate property (*g*); where she authorised her trustee to take shares in a company (*h*); and where she joined her husband in effecting a policy on their joint lives, and assigned her separate property to secure the repayment of a loan (*i*); but where she had been living with her husband at an hotel she was not held liable for the

(*d*) *Johnson* v. *Gallagher*, 3 D. F. J. 494.

(*e*) *Morrell* v. *Cowan*, 6 C. D. 166, 7 C. D. 151; *Davies* v. *Jenkins*, 6 C. D. 728; *McHenry* v. *Davies*, L. R. 10 Eq. 88; *L. & Y. Bank* v. *Tee*, W. N. (75), 213; *Nat. Pro. Bank* v. *Thomas*, 24 W. R., 1013; *Bulpin* v. *Clarke*, 17 Ves. 365; *Mayd* v. *Field*, 3 C. D. 587.

(*f*) *Vaughan* v. *Vanderstegen*, 2 Drew. 363; *London C. B.* v. *Lempriere*, 4 P. C. 572.

(*g*) *Bolden* v. *Nicholay*, 3 Jur. N. S. 884; *Murray* v. *Barlee*, 3 M. & K. 209.

(*h*) *Butler* v. *Cumpston*, L. R. 7 Eq. 16.

(*i*) *Winter* v. *Easum*, 12 W. R. 784.

bill (*k*); and where she signed an annuity deed, but did not join in the operative parts, she was held not to have disposed of her separate estate (*l*). No instrument which would not take effect to bind a person *sui juris* could be held to bind the separate property of a married woman (*m*), and L. J. Turner doubted whether a contract implied in law could bind separate estate (*n*).

Married woman not personally liable before the Act of 1882.

The separate property, mentioned in section 1 of the Act of 1882, includes separate property acquired before, and outside the Act, as well as that acquired under it (*o*). By that section a married woman is liable to the extent of her separate property on her contracts, and can be sued in contract, tort or otherwise. It is a question how far this renders her personally liable for her contracts or torts. She was not so before the Act, and she cannot now apparently be made bankrupt unless she comes within section 1, sub-section (5), see note p. 64. L. J. Mellish once expressed an opinion that a married woman could be made bankrupt under the Act of 1870 if she had separate estate (*p*), but in *Ex parte Jones* (*q*), James,

(*k*) *Re Bromley*, 21 W. R. 155.

(*l*) *Tullet* v. *Armstrong*, 4 Bea. 319, 4 My. & C. 390.

(*m*) Pollock on Contracts, 95; and the comments there on *McHenry* v. *Davis*, L. R. 10 Eq. 88.

(*n*) *Johnson* v. *Gallagher*, 3 D. F. & J., 494, 515, but see *Murray* v. *Barlee*, 3 My. & K. 209.

(*o*) Compare sec. 1, sub-ss. (2) (3) (4), pp. 48, 60, 62.

(*p*) *Ex parte Holland*, *Re Heneage*, L. R. 9 Ch. 307,

(*q*) 12 C. D. 484.

Introdn. Brett, and Cotton, L. JJ., held that neither before the Act of 1870, nor under it could a married woman be made bankrupt. It might possibly be held, though there has been no decision on the point, that a married woman within 20 & 21 Vict. c. 85, sections 21, 25 (*r*), can be made bankrupt. The ground of the decision in *Ex parte Jones* was that the married woman could not be sued under the Act of 1870. Under the Act of 1882 she can be sued, but the fact that the Act has provided for her being made bankrupt in one particular case (*s*), seems to exclude the notion that she was intended to be made bankrupt in any other. A married woman trading by the custom of London separately from her husband (*t*) and the wife of a convict (*u*) could be made bankrupt before the Acts.

Contracts enforced against her separate property.

But though the liabilities of a married woman could not, and perhaps cannot, be enforced against her personally, they can, where there is no restraint on anticipation, be enforced against her separate property, whether acquired under the Acts of 1870 and 1882, or outside them (*v*). The creditors of the separate property have their remedy in equity, either during the life of the married woman, or after her death (*x*). They cannot, how-

(*r*) App. p. 153.
(*s*) Sec. 1, sub-s. (5).
(*t*) *Lavie* v. *Philips*, 3 Burr. 1776.
(*u*) *Ex parte Franks*, 7 Bing. 762.
(*v*) *Thompson* v. *Bennett*, 6 C. D. 739; *Pike* v. *Fitzgibbon*, 17 C. D. 454, note (*b*), sec. 1 (4), p. 63.
(*x*) *Collett* v. *Dickenson*, 11 C. D. 687; *Owens* v. *Dickenson*, Cr. & Ph. 48.

ever, bind her separate property till after judgment recovered (*y*); and an injunction to restrain the married woman from parting with it, and a motion for a receiver were both refused (*z*). The creditors rank *pari passu;* for her liabilities are not charges but debts (*a*). Creditors rank before legatees (*b*); but V.-C. Hall, in a decision approved by V.-C. Bacon (*c*), held that they cannot prove in a beneficiaries' administration suit, but must take "independent action," by which he apparently meant that they must bring a separate administration suit. It was held in *Pike* v. *Fitzgibbon* (*d*), reversing the decision of V.-C. Malins, that the contract of a married woman could not bind separate property, her title to which accrued after the date of the contract, nor could she during coverture covenant so as to bind after-acquired property (*e*), but the Act of 1882, sec. 1, sub-sec. 4, provides that every contract entered into by a married woman with respect to and to bind her separate property shall bind not only the separate property which she is pos-

(*y*) *Johnson* v. *Gallagher*, 3 D. F. J. 494; *Nat. Pro. Bank* v. *Thomas*, 24 W. R. 1013; *Robinson* v. *Pickering*, 16 C. D. 660.

(*z*) *Nat. Pro. Bank* v. *Thomas*, 24 W. R. 1013.

(*a*) *Owens* v. *Dickenson*, Cr. & Ph. 48; *Thompson* v. *Bennett*, 6 C. D. 739.

(*b*) *Norton* v. *Turvil*, 2 P. Wms. 144.

(*c*) *Hodgson* v. *Williamson*, 15 C. D. 87, 92.

(*d*) (C. A.) 17 C. D. 454, over-ruling *Flower* v. *Buller*, 15 C. D. 665, and reversing V.-C. Malins, 14 C. D. 837.

(*e*) *Smith* v. *Lucas*, 18 Ch. D. 531.

Introdn. sessed of or entitled to at the date of the contract, but also all separate property which she may thereafter acquire. It will be observed that this sub-section applies to contract (which includes breaches of trust) (*f*), but not to the married woman's liability for torts (*g*). There will, it is submitted, be no question that her liability for torts extends to all separate property belonging to her at the time of execution. This is not directly provided for by the Act; but the ground of the decision in *Pike* v. *Fitzgibbon*, in the case of contracts, was, that she was only liable in respect of the separate property, upon the faith of which she had contracted, and this principle cannot be applied to torts (*g*).

The effect of the execution of a general power by a married woman.

There have been many conflicting decisions (*h*) on the question whether, where there is a limitation of separate property to a married woman for life to her separate use, followed by a general power of appointment, the exercise of the power made the property part of her separate estate, and assets for her creditors. It was settled that this was so where the

(*f*) Sec. 24.

(*g*) Sec. 1, sub-s. (4), notes (*a*) and (*b*), p. 63.

(*h*) *Norton* v. *Turvil*, 2 P. Wms. 144; *Sockett* v. *Wray*, 4 Bro. C. C. 483; *Vaughan* v. *Vanderstegen*, 2 Drew. 165, 363; *Blatchford* v. *Wooley*, 2 Drew. & Sm. 204; *Hobday* v. *Peters*, 28 Bea. 354; *Heatley* v. *Thomas*, 15 Ves. 596; *Hughes* v. *Wells*, 9 Ha. 749; *Shattock* v. *Shattock*, L. R. 2 Eq. 182; *London Chartered Bank* v. *Lempriere*, 4 P. C. 572; *Mayd* v. *Field*, 3 C. D. 587; *Godfrey* v. *Harben*, 13 C. D. 216; *Pike* v. *Fitzgibbon*, 17 C. D. 454, 466.

power might be exercised by deed or will (*i*); but some doubt still exists in cases not within the Act of 1882, as to whether this is the law where the power was by will only; see and consider the observations of L.J. Cotton, in *Pike* v. *Fitzgibbon* (*k*), upon the judgment of V.-C. Hall, in *Godfrey* v. *Harben* (*l*). By section 4 of the Act of 1882, the exercise by a married woman of a general power by will has the effect of making the property appointed liable for her debts and other liabilities in the same manner as her separate estate is made liable under the Act (*m*). And this, it is submitted, whether the power is connected with a trust for separate use or not (*m*). Introdn.

The debts of a married woman contracted on the faith of her separate property do not become legal debts on the death of her husband, but the creditors can follow the separate property (*n*) so long as it remains unconverted (*o*). The Statute of Limitations cannot be pleaded in the case of separate property. This somewhat doubtful equity is founded on an old decision (*p*), in which it was held "that all the sepa- "rate estate of the *feme covert* was a trust estate "for the payment of debts, and a trust is not within Creditor's rights.

(*i*) *London Chartered Bank* v. *Lempriere*, 4 P. C. 572; *Mayd* v. *Field*, 3 C. D. 587.
(*k*) 17 C. D., at p. 466.
(*l*) 13 C. D., 216.
(*m*) See note to sec. 4, p. 72.
(*n*) *Bolden* v. *Nicholay*, 3 Jur. N. S. 884; *Pike* v. *Fitzgibbon*, 17 C. D. 454.
(*o*) *Mayd* v. *Field*, 3 C. D. 587.
(*p*) *Norton* v. *Turvil*, 2 P. Wms. 144.

Introdn. "the statute of limitations." This decision was followed in a modern case in Ireland (*q*), though with the disapprobation of Blackburne, L.J. of Appeal, and V.-C. Bacon upheld the doctrine in a very recent case (*r*). But whether separate property within the Act of 1882 can be said to be subject to a trust may be doubted; and, at any rate, if it should be held that the legal interest in property held under the Act vests in the married woman the statute would run.

The married woman's ante-nuptial debts.

The ante-nuptial debts of a married woman were held to bind her separate property, in the case of the husband's bankruptcy, in a case outside the Act of 1870 (*s*). It is not easy to see how this decision can be reconciled with the dictum of L.J. Turner (*t*), that the separate property is only liable to contracts made on the faith of it, or with the doctrine laid down in *Pike* v. *Fitzgibbon* (*u*), unless on the ground that a *feme sole* can bind for her debts that which she afterwards makes separate property on marriage, and that the first transaction over-rides the second. But there can hardly now be another decision outside the Acts. The provisions of the Married Woman's Property Acts on the subject of ante-nuptial liabilities only apply to persons within

(*q*) *Vaughan* v. *Walker*, 6 Ir. Ch. Rep. 471, 8 Ir. Ch. Rep. 458.

(*r*) *Hodgson* v. *Williamson*, 15 C. D. 87.

(*s*) *Chubb* v. *Stretch*, L. R. 9 Eq. 555.

(*t*) *Johnson* v. *Gallagher*, 3 D. F. J. 494.

(*u*) 17 C. D. 454.

the respective Acts (*v*). For the provisions of the Acts of 1870-1874, see Appendix, pp. 148, 150, and of 1882, below, pp. 98, 104, 112, and generally see notes to sections 13 & 14, pp. 99–114. Before the Act of 1870 the husband was liable, but only during coverture (*x*), for the wife's ante-nuptial debts, contracts, and torts to the exoneration of the separate estate of the wife; and he is, it is presumed, still only liable during coverture. Where under the old law the husband and wife were sued jointly for the ante-nuptial debts of the wife, the Court refused to discharge the wife from custody where she had separate property (*y*). A husband within the Act of 1870 is not liable for her debts (*z*), and a husband within the Act of 1874, or the Act of 1882 is only liable to a limited extent for debts, contracts, or torts (*a*). The wife outside the Acts is not liable at common law, but in equity she is apparently liable on her husband's bankruptcy (*b*). If she is within the Act of 1870 she is liable for debts only (*c*), but if within the Act of 1882 for debts, contracts, and torts, and

Introdn.

(*v*) Act of 1870, sec. 12. Act o 1874, sec. 1. Act of 1882, secs. 13, 14.

(*x* *Heard* v. *Stamford*, 3 P. Wms. 409, *Kluht's case*, 3 De G. & Sm. 210.

(*y*) *Ivens* v. *Butler*, 26 L. J. Q. B. 145; *Jay* v. *Amphlett*, 3 L. J. Ex. 176.

(*z*) Act of 1870, sec. 12, but see note (*a*) to sec. 14, p. 105, as to what are debts.

(*a*) Act of 1874, secs. 2, 5, App. p. 151, Act of 1882, sec. 14, note (*c*), p. 108.

(*b*) *Chubb* v. *Stretch*, L. R. 9 Eq. 555.

(*c*) Act of 1870, sec. 12, App. p. 148, but see note (*a*) to sec. 13, p. 101, as to what are debts.

Introdn. as between herself and her husband primarily liable (*d*).

The effect of fraud on separate property.

There seems to be some doubt as to the effect of fraud upon the separate property of a married woman. In *Vaughan* v. *Vanderstegen* (*e*) it was held to make her separate property assets. This was doubted in *London Chartered Bank* v. *Lempriere;* L.J. James said, (*f*) "It is not easy to see on what principle the fraud could settle the nature of the property subject to the appointment or affect the appointees. It is easy to see how fraud might make that a debt to which the married woman would in equity be liable notwithstanding her coverture, and that there being such a liability or debt, equity would deal with any property to which she was, notwithstanding coverture, absolutely entitled, and any property over which she had a general power of appointment, exactly as it would do in the case of a man or a *feme sole* dying indebted. Given the relation of debtor and creditor in equity, all the consequences of such relation would appear to follow just as if there were no coverture in the case. . . . It appears to their lordships, therefore, that it was not necessary for the plaintiff to make out a case of fraud. All that was necessary was to show that the married woman intended to contract so as to make herself,

(*d*) Act of 1882, sec. 13, note (*c*), p. 103.

(*e*) 2 Drew. 363.

(*f*) 4 P. C. 572, 596.

that is her separate property, the debtor." The income of a married woman, restrained from anticipation, could not be reached, where she had fraudulently appointed the reversion (*g*), nor where she had signed a promissory note and let judgment go against her by default (*h*). In the former case the purchaser had notice of the fraud. The general estate of a married woman surviving to her is bound by her fraud committed during coverture (*i*), but her separate property, not liable by any engagement, was not liable for her fraud, independently of the Act of 1882 (*k*), any more than for her breaches of trust or her other torts. In *Wainford* v. *Heyl* (*l*) the present Master of the Rolls stated the law thus: "A married woman is liable, or rather her separate estate is liable (for there is no personal liability as far as she is concerned), to make good all contracts which are made by her with express reference to the separate estate, or which from the nature of the contract itself must be intended to be so referred; but she is not liable even for general contracts which from their nature cannot be so referred; *a fortiori* she is not liable for general torts, but her husband is liable."

(*g*) *Arnold* v. *Woodhams*, L. R. 16 Eq. 29.

(*h*) *Davies* v. *Ballenden*, W. N. (1882) 92 (C. A.).

(*i*) *Sharpe* v. *Foy*, L. R. 4 Ch. 35; *Re Lush*, L. R. 4 Ch. 591; *Green* v. *Lyon*, 21 W. R. 695.

(*k*) See note to sec. 1, sub-s. (2), p. 50.

(*l*) L. R. 20 Eq. 321, 323.

Introdn.

But if the married woman commits a breach of trust, in the case of any settlement, under which she has a beneficial interest to her separate use, her separate property under the settlement will be liable for her breach of trust; though not where she was restrained from anticipation, or where her interest is contingent (*m*). But torts and breaches of trust committed by any married woman since the Act of 1882, will bind her separate property (*n*), and women married since the Act are liable for their ante-nuptial torts and breaches of trust (*o*).

Married woman's liability to be sued.

A married woman can be sued under the Act of 1882, in contract, or tort, or otherwise, and as executrix, without her husband (*p*), and she is liable to criminal proceedings by the husband in certain cases (*q*), and for the cases under the old practice, see section 1 (2), note (*c*), p. 51; and as to questions between husband and wife, see section 17, p. 115.

Intestacy of married woman.

3. *Devolution on Death.*—On a married woman's death, intestate, her separate real estate descends to her heir, subject to the husband's estate by the curtesy (*r*), and her savings invested in real estate

(*m*) *Clive* v. *Carew*, 1 J. & H. 199; *Keays* v. *Lane*, 3 Ir. R. Eq. 1; *Jones* v. *Higgins*, L. R. 2 Eq. 538.

(*n*) Sec. 1 (2), (3), (4), sec. 24.

(*o*) Sec. 13, note (*a*), p. 101.

(*p*) Secs. 1, subs. (2), and 18.

(*q*) Sec. 16, note, p. 114.

(*r*) *Morgan* v. *Morgan*, 5 Mad. 408; *Follett* v. *Tyrer*, 14 Sim. 125; *Appleton* v. *Rowley*, L. R. 8 Eq. 139; *Cooper* v. *Macdonald*, (C. A.) 7 C. D. 288; *Eager* v. *Furnival*, 17 C. D. 416.

go to the heir, and not to her husband (*s*). Arrears of rent would go to the administrator (*t*). Her personal estate in possession, held to her separate use, went, and will still go to her husband in his marital right (*u*), and her choses in action to him as her administrator (*x*). The right of her husband to be her administrator is exclusive of all other persons (*y*), and the Court has no discretion, as it has in other cases (*z*). Whether this right of the husband is founded on the common law, or on the statute of Edw. III., it is confirmed to him by 29 Car. II. c. 3. If the wife has a protection order, or has obtained judicial separation, administration limited to such personal property as she has acquired since the order or sentence, is granted to the next-of-kin (*a*). But the husband may oppose the grant in such a case, on the ground that the order ought to be discharged or the sentence reversed, for there is nothing in the Divorce Act (*b*) to limit the discharge or reversal to the wife's lifetime. The husband has

(*s*) *Steward* v. *Blakeaway*, 4 Ch. 603, but query as to husband's estate to the curtesy, which is not mentioned.

(*t*) *Brownrigg* v. *Pike*, 7 P. D. at p. 64.

(*u*) *Maloney* v. *Kenedy*, 10 Sim. 254; *Bird* v. *Peagrim*, 13 C. B. 639.

(*x*) *Proudley* v. *Fielder*, 2 My. & K. 57.

(*y*) *Humphrey* v. *Bullen*, 1 Atk. 458.

(*z*) *Sir George Sand's case*, 3 Salk. 22.

(*a*) *In the goods of Wornum*, 1 Sw. & T. 513.

(*b*) *Mudge* v. *Adams*, 6 P. D. 54.

Introdn.

no right to administration, if there is a sentence of judicial separation or a protection order in force (*c*), or if there has been a divorce (*d*). If the husband died without having taken out administration to his wife, the practice was formerly to grant it to her next-of-kin, who held it in trust for the representative of the husband (*e*). But now the Court will grant administration where there is the interest (*f*), and administration was not granted to the husband where the interest went by settlement to the wife's next-of-kin (*g*), and in order to get at the wife's property in a case where the interest went to the husband, the administration must be taken out to both husband and wife (*h*).

The rights of the husband administrator.

The administrator was in every case until the Statute of Distributions, entitled to the whole property of the intestate, and, though this right of administrators was taken away by the Statute of Distributions, the husband's right to the whole of his wife's property was specially preserved by the 29 Car. II. c. 3, s. 25. The husband surviving his wife

(*c*) *In the goods of Stephenson*, L. R. 1 P. & M. 287.

(*d*) *In the goods of Hay*, L. R. 1 P. & M. 51.

(*e*) *Squib* v. *Wyn*, 1 P. Wms. 378; *Humphrey* v. *Bullen*, 1 Atk. 458.

(*f*) *In the goods of Gill*, 1 Hag. 341; *Field* v. *Hanger*, 3 Hag. 769, and where the husband's estate was insolvent, *Re Wensley*, 7 P. D. 13.

(*g*) *In the goods of Pountney*, 4 Hag. 289.

(*h*) *Att.-Gen.* v. *Partington*, L. R. 4 H. L. 100; *in the goods of Harding*, L. R. 2 P. & M. 394.

is entitled as her administrator to her choses in action, including the policies effected by her under the Acts of 1870 and 1882, even though they are settled to her separate use, for the words "as if she were sole and unmarried" do not apply to devolution of property (*i*). To his wife's separate property in possession, whether vested in him at law or not, he is entitled in his marital right without taking out administration (*k*). To her chattels real he is entitled in his marital right, if they were vested in him during coverture, but only as administrator if they were not so vested (*l*). So if they were settled to her separate use, and he held the legal estate as trustee for the separate use of his wife, he would take in his marital right, and it was held in Ireland (*m*) that even if they were vested in strangers as trustees for her separate use, he would still take in his marital right, but if she be dispossessed before marriage he must take out administration. If it should be held that under the Act of 1882, sec. 1, he no longer takes the legal estate in property given to his wife's separate use without the intervention of a trustee, it will be a question whether on her death he will be able to reach

Introdn.

(*i*) *Proudley* v. *Fielder*, 2 My. & K. 57.

(*k*) *Maloney* v. *Kenedy*, 10 Sim. 254; *Bird* v. *Peagrim*, 13 C. B. 639.

(*l*) Williams on Exs. 8th ed. 701; but see *Archer* v. *Lavender*, Ir. Rep. 9 Eq. 220.

(*m*) *Archer* v. *Lavender*, Ir. Rep. 9 Eq. 220.

Introdn. chattels real so given without taking out administration. The husband takes the separate property of the wife, whether in his own right (*n*), or as administrator (*o*), subject to the liabilities in respect to such property. The funeral expenses of the wife are payable out of the husband's estate, even where she had separate property liable for her debts (*p*), but not where she has charged them on her separate estate by will (*q*). The administration of separate property is in the usual course, see Seton, 849, below, Appendix, Form XII.

There is no alteration of the law in the Act of 1882 with respect to the husband's rights in his wife's property on intestacy. In this respect the Act cannot be said to aim at finality. As to real estate, the wife's dower cannot be considered an equivalent of the husband's curtesy, and the widow only gets one-third of the intestate husband's personal estate, while the surviving husband takes all his wife's.

Where the married woman has made a will of her separate estate and appointed executors, the property goes to them as in the case of a *feme sole*. In default of the appointment of executors the husband

(*n*) *Maloney* v. *Kenedy*, 10 Sim. 254.

(*o*) *Heard* v. *Stamford*, 3 P. Wms. 409.

(*p*) *Bertie* v. *Ld. Chesterfield*, 9 Mod. 31; *Gregory* v. *Lockyer*, 6 Madd. 90.

(*q*) *Willeter* v. *Dobie*, 2 K. & J. 647.

used always to take the administration *cum testamento annexo* (*r*), but lately it has been the practice to let the administration go with the interest (*s*). A will of a married woman under a power disposing of real estate only, was not entitled to probate, though there was an appointment of executors (*t*) *secus* as to a *feme sole* (*u*). Where the will is made under a power, a married woman's executors do not take *jure representationis*, but merely under the power, and so are only entitled to property disposed of by the will (*x*). She can continue the representation to her testator (*y*).

(*r*) *Ross* v. *Ewer*, 3 Atk. at p. 160; *Salmon* v. *Hays*, 4 Hag. at p. 386.

(*s*) *In the goods of Bailey*, 2 Sw. & T. 135; *Brenchley* v. *Lyon*, 2 Robt. 441; *in the goods of Dawson*, 2 Robt. 135.

(*t*) *In the goods of Tomlinson*, 6 P. D. 209. Cf. *Brownrigg* v. *Pike*, 7 P. D. 61.

(*u*) *In the goods of Jordan*, 1 P. & M. 555.

(*x*) *Tugman* v. *Hopkins*, 4 M. & Gr. 389; *O'Dwyer* v. *Geare*, 1 Sw. & Tr. 465. Cf. *Brownrigg* v. *Pike*, 7 P. D. 61.

(*y*) *Barr* v. *Carter*, 2 Cox, 429; and where she does not appoint an executor, see Wms. Ex. 421, 8th ed.

THE

MARRIED WOMEN'S PROPERTY ACT, 1882.

45 & 46 VICT. c. 75.

An Act to consolidate and amend the Acts relating to the Property of Married Women.

[18 August, 1882.]

WHEREAS it is expedient to consolidate and amend the Act of the thirty-third and thirty-fourth Victoria, chapter ninety-three, intituled "The Married Women's Property Act, 1870," and the Act of the thirty-seventh and thirty-eighth Victoria, chapter fifty, intituled "An Act to amend the Married Women's Property Act (1870)":

Be it enacted, &c., as follows:

Married woman to be capable of holding property and of contracting as a feme sole.

1. (1.) A married woman shall, in accordance with the provisions of this Act, be capable of acquiring, holding, and disposing by will or otherwise (*a*), of any real or personal property (*b*) as her separate property, in the same manner as if she were a feme sole, without the intervention of any trustee.

Separate property outside the Acts.

(*a*) As to the married woman's powers of acquiring, holding, and disposing of her separate property outside the Married Women's Property Acts, see Introduction,

pp. 6–21. Personalty, whether in possession, *Fettiplace* v. *Gorges* (3 Bro. C. C. 8), or in reversion, *Sturgis* v. *Corp*, (13 Ves. 190), she could dispose of without the concurrence of her husband like a *feme sole*, and see cases above, p. 18, note (*y*). She could also dispose of her equitable estate in realty, whether the legal estate was in trustees, *Taylor* v. *Meads* (4 D. J. & S. 597), or not, *Hall* v. *Waterhouse* (5 Giff. 64). But she could not deal with the legal estate, without acknowledgment under the Fines and Recoveries Act, *ibid.* **§ 1 (1).**

Under the Act of 1870 it has not been decided, whether, if she invested her savings in real estate under sec. 1, she would hold the legal estate to her separate use, but it is submitted she would not. The words of the Act are; "deemed and taken to be held and *settled* to her separate use," see Appendix, p. 141. If the property was settled to her separate use outside the Act of 1870 without the legal estate being conveyed to trustees, the husband of a married woman would have had the legal estate during coverture, and she could not dispose of the legal estate in remainder except by deed acknowledged, but see *Pride* v. *Bubb*, (7 Ch. 64), where the legal estate was in trustees. The same remarks apply to property descending on her under the 8th section of the Act of 1870, see note (*a*), section 5, below, p. 73, though perhaps a distinction might be taken between the two sections. But here again there has been no case decided upon the point. **Under the Act of 1870.**

Under the present section of the Act of 1882, it is submitted that the married woman will be able to acquire, hold, and dispose of the legal and equitable interest in all property coming to her under the Act; and her husband will no longer take any legal or equitable interest in such property. She will be able to dispose of realty coming to her under the Act without the concurrence of her husband and without acknowledgment. Of her personalty **Under the Act of 1882.**

§ 1 (1). held to her separate use she could always dispose without his concurrence, see note (*y*), p. 18 above, and 'property' is to include choses in action under section 24, below, p. 137. Property coming to the married woman under the Act will include:—property belonging to her before marriage; and property acquired by, or devolving upon her after marriage under section 2; and property, her title to which accrues after the commencement of the Act under section 5, pp. 73, 76. It is submitted that this section gives her the legal estate in real property, conveyed directly to her for her separate use, as well as in real property given to her and her heirs, and that the legal estate in such property will no longer vest during coverture in the husband. It would be unreasonable to say that the Act intended that, as to the former class of property, she should still be restricted in her power of disposition. The effect of such a contention would be that if property were, after the Act, to be conveyed to her and her heirs, she could dispose of it without acknowledgment, but if it were conveyed to her and her heirs for her separate use, she could not. It is submitted that the married woman takes the legal estate in both cases, and that the husband, as an implied trustee, is included under the expression "without the intervention of any trustee," but see section 2, note (*a*), p. 66, section 19, note (*a*), p. 127.

Transfer between husband and wife.

It will be a question, whether under the Act the wife can at law acquire property from the husband. The reason given for her former inability to do so was, that the husband and wife were one person in law, Lush J. in *Phillips* v. *Barnett*, 1 Q. B. D. 440. If the legal interest in property vests in the wife under the Act, they are now, as far as property is concerned, not one person, but two. Husband and wife can, under the Conveyancing Act, 1881, section 50 (see Appendix, p. 158), convey freehold land or a thing in action to each other as if they were

strangers, and if it should be held that the wife takes the legal interest in leaseholds and other personal property, there seems no reason why husband and wife could not transfer property to each other in the same way as to any other person. **§ 1 (1).**

The Act makes no change in the devolution of the property of a married woman dying intestate. The fact of the husband not taking any legal interest in the wife's real property will not apparently prevent him taking an estate by the curtesy, if she does not dispose of such property during her life or by will, but it may have the effect of obliging him to take out administration before he can claim her chattels real undisposed of, Williams on Exs. (8th Ed. 701), but see *Archer* v. *Lavender* (Ir. Rep. 9 Eq. 220), and Introduction, p. 39. **Intestacy.**

The 8th section of the Wills Act, 7 W. IV. & 1 Vict. c. 26, provides that a married woman shall have no greater power of disposition than before that Act. As to that, see Introduction, p. 18, and *Noble* v. *Willock* (L. R. 7 H. L. 580, 590, 597). It was there held that a will of a married woman, made during coverture, but coming into operation after the death of her husband, was not valid to pass anything but her separate estate. But such a will is capable of passing all that can be traced as being her separate estate, and as to that, the death of the husband cannot affect the will, *Bishop* v. *Wall* (3 C. D. 194).

(*b*) Does this include property held by a married woman as trustee? In *Howard* v. *Bank of England*, (L. R. 19 Eq. 295), the present Master of the Rolls expressed an opinion that section 3 of the Act of 1870 did not apply to trust property. But it has not been decided whether sections 7 and 8 apply to it, or not. It was decided in *Bathe* v. *Bank of England* (4 K. & J. 564), that the 20 & 21 Vict. c. 85, s. 21, see Appendix, p. 153 (even before it was explained by 21 & 22 Vict. c. 108 **Trust property.**

§ 1 (1). see Appendix, p. 155) did apply to trust property, and that a protection order under that Act includes trust property. The ground of this decision was, that the Act gave the married woman power to contract; and if the principle of that decision is applicable, it would seem to follow that the Act of 1870 did not, and the Act of 1882 does, include property held upon trust by the married woman. If it should be held that the Act applies generally to trust property, the inconveniences of appointing a woman trustee, as to which see Lewin, 7th Ed. p. 32, would be greatly lessened. But if trust property given to a *feme sole* does not come within section 2 of the Act, and trust property given to a married woman does not come within sections 2 and 5, and all such property still vests in the husband, he would still have to concur in all his wife's acts not within section 18. There has, of course, never been any legal disqualification which prevented her being a trustee, but it has been found extremely inconvenient in practice to make her one, because under the old law her husband had, and if the Act of 1882 does not apply, will still have, to concur in all her acts. For instance, she cannot give a valid receipt without him. This would be remedied if the Act was held to apply generally to trust property. But the fact that the 18th section makes special provision that a married woman, executrix, administratrix, or trustee, may transfer, or join in transferring investments, which, if the whole Act applied to trust property, she could transfer or join in transferring under section 8, seems to negative that construction. It is provided by section 6, that investments standing in the name of the married woman shall be deemed her separate *property*, and further that the fact they are so standing shall be sufficient *primâ facie* evidence that she is *beneficially* entitled, and in section 7, the investments are

to be deemed her separate *property*. The word "beneficially" in section 6 may be taken to mean that the Act shall not apply to trust property held by a married woman before the Act. It has never been decided that a married woman can hold a trust to her separate use; but on the other hand, if a married woman were to declare herself a trustee for another, it is very unlikely that the Court would refuse to carry out the trust. § 1 (1).

This question is peculiarly important in the case of real estate. If sections 1, 2 and 5 of the Act do not apply to trust property all the objections to appointing a married woman a trustee remain; she will still have to get the concurrence of her husband in conveyances, and will still have to acknowledge her deeds under the Fines and Recoveries Act as amended by the Conveyancing Act, 1882, see App. p. 158, except in cases within the Vendor and Purchaser Act, 1874. That Act provides, section 6, that "when any freehold or copyhold hereditament shall be vested in a married woman as a bare trustee, she may convey or surrender the same as if she were a feme sole." As to what is a bare trustee, see *Christie* v. *Ovington* (1 C. D. 279, V.-C. H.), and *Mornag* v. *Swansea Urban Sanitory Authority* (9 C. D. 582, M. R). The view of V.-C. Hall was that a bare trustee was a trustee without active duties. But the Master of the Rolls decided that a person having a beneficial interest could not be a bare trustee, and expressed an opinion that any trustee without beneficial interest could convey under that Act. Real estate.

If on the other hand the Act should be held to apply to trust property, a married woman will, except so far as the influence of her husband may be feared, be as eligible a trustee as any other person. And it does seem an unreasonable construction of the Act to say that a married woman is responsible for breaches of trust under section 24, see note (*a*), p. 137, and that her husband is exonerated Does the Act apply to trust property?

§ 1 (2). from liability for her breaches of trust under the same section, and yet that the Act does not enable a married woman to act in the trust without her husband's concurrence.

Contract; liability; suing.

(2.) A married woman shall be capable of entering into and rendering herself liable (*a*) in respect of and to the extent of her separate property on any contract (*b*), and of sueing and being sued, either in contract or in tort, or otherwise, in all respects as if she were a *feme sole*, and her husband need not be joined with her as plaintiff or defendant, or be made a party to any action or other legal proceeding brought by or taken against her (*c*); and any damages or costs recovered by her in any such action or proceeding shall be her separate property; and any damages or costs recovered against her in any such action or proceeding shall be payable out of her separate property, and not otherwise (*d*).

Extent of married woman's liability.

(*a*) It is a question of some considerable difficulty, and one that cannot be satisfactorily determined without judicial decision, whether a married woman is rendered personally liable under this sub-section. There is no doubt that she was not so before the Act, *Wainford* v. *Heyl*, (L. R. 20 Eq. 321), and her separate property was reached, not by a personal order upon herself, but by a charge on the property. *Durrant* v. *Ricketts*, (8 Q. B. D. 177), and it was for this reason, that it was held she could not be made bankrupt, *Ex parte Jones* (12 C. D. 484). This sub-section renders her liable to be sued "in all respects as if she were a *feme sole*," which at first sight

would appear to make her personally liable; but these words are confined by the subsequent provision, that "any damages or costs recovered against her shall be payable out of her separate property, and not otherwise." And this must be taken with the words above, that she "shall be liable to the extent of her separate property" on contract. It is submitted that if it should be held that the liability of a married woman under the Act is confined to her separate estate, her property acquired after discoverture will not be liable for her contracts or torts entered into or committed during marriage. This would be a most extraordinary result of the Act, but as to contracts, at any rate, would be supported by the language of sub-sections (3) & (4), pp. 60, 62, and the decision in *Pike* v. *Fitzgibbon* (17 C. D. 454). Unless, therefore, the expression "separate property," which is not defined by the Act, is taken to mean all the property of the married woman independent of her husband, including the reversionary interests in realty of a woman married before the Act, her liability is still limited. And even if this definition of separate property were accepted, there would still be the property as to which she is restrained from anticipation, which could not be held liable for her contracts before the Act, *Pike* v. *Fitzgibbon*, 17 C. D. 454, and is not affected by it; see section 19, p. 127. And it is submitted that a person, whose whole property cannot be reached, cannot be personally liable. And sub-section 5, below, p. 64, seems to restrict the bankrupty of married women to one case. See note to that sub-section.

§ 1 (2).

The property acquired by a married woman on discoverture.

Property includes choses in action under section 24, p. 137. Separate property, though there is no definition of it in the Act, must be taken to mean property held to the separate use of a married woman, whether under the Act or outside it. It will include: 1. Property held by trustees upon trust for the separate use of a married woman,

What separate property is liable.

§ 1 (2). whether conveyed to them before or after the Act. 2. Property conveyed to the married woman directly for her separate use, and before the Act vesting in her husband at law. 3. Property coming to her under the Act of 1882, sections 2 and 5, (and possibly under the Act of 1870, sections 1, 7 and 8, Appendix pp. 141, 145), and of which both the legal and equitable interest vest in her, and not in any other person. And such property will be liable, whether it is acquired by the married woman before or after the contract is entered into, or the tort committed; see note (*a*) to sub-section (4) below, p. 63, unless there is a restraint on anticipation, *Pike* v. *Fitzgibbon* (17 C. D. 454); but it cannot be reached before the date of judgment recovered, *Nat. Pro. Bank* v. *Thomas* (24 W. R. 1013); *Robinson* v. *Pickering* (16 C. D. 660), unless the married woman is held liable to be made bankrupt, as of course she is liable under section 1, sub-section 5. Property subject to a restraint on anticipation is not liable; see section 19, p. 127, *Roberts* v. *Watkins* (36 L. T., N. S. 799), even after the death of the husband, *Pike* v. *Fitzgibbon* (*ubi supra*), except for the married woman's ante-nuptial liabilities; see note (*a*) to section 13, p. 99. The married woman's separate estate will by this section become liable for fraud; see *London Chartered Bank* v. *Lemprière* (4 P. C. 572); *Wainford* v. *Heyl* (L. R. 20 Eq. 321). By 16 & 17 Vict. c. 45, s. 25, an annuity under any Act then in force is only alienable on bankruptcy; see Act of 1882, sections 6, 7, and therefore not alienable by a married woman not liable to bankruptcy, see note to section 1 (5).

A married woman can contract in respect of her separate pro-

(*b*) As to the capability of a married woman to contract before the Act of 1870, see Introduction, p. 21, and the Act of 1870 gave her no additional powers of contracting, *Howard* v. *Bank of England* (L. R. 19 Eq. 295); *Summers* v. *City Bank* (L. R. 9 C. P. 580). Compare the

language of sections 21, 26 of 20 & 21 Vict. c. 85, Appendix, p. 153. By the present Act she can contract on her separate property as freely as a *feme sole*, and by section 24 of the Act, "contract" includes the acceptance of any trust, or of the office of executrix or administratrix, and the liabilities of married women under the Act include their liabilities for breach of trust or devastavit; so that to the extent of her separate property a married woman is now liable, like any other trustee, in respect of trust property. A married woman was not before the Act liable on a contract implied in law, *Johnson* v. *Gallagher* (3 D. F. & J. 494), and cases there cited, but see *Murray* v. *Barlee* (3 M. & K. 209), and it seems doubtful whether this sub-section renders her liable; and where she had received rents to her separate use by mistake, the rest of her separate property was not liable, *Wright* v. *Chard* (4 Drew. 673). As to torts, see note (*c*), p. 59, below, and as to ante-nuptial liabilities, and joint execution against husband and wife, see notes to sections 13 and 15, pp. 99, 112. And her separate property can be followed by the creditors after the husband's death as long as it remains unconverted, *Bolden* v. *Nicholay* (3 Jur. N. S. 884); *Pike* v. *Fitzgibbon* (17 C. D. 454); *Mayd* v. *Field* (3 C. D. 587).

§ 1 (2.)

Property as freely as a *feme sole*.

The husband is not liable on his wife's contracts, unless they are made by his expressed or implied authority, and in that case they will, it is submitted, be held not to bind her separate estate; see as to this, note to section 1, sub-section (3), below, p. 60. As to the liability of husband and wife for the wife's ante-nuptial contracts, see notes to sections 13 and 14, pp. 99, 104.

Husband not liable for his wife's contracts.

(*c*) Before the Act of 1870 a married woman could not sue or defend alone, even where she alleged the marriage to be void, *Caldicot* v. *Baker* (13 W. R. 449); *Sealey* v. *Gaston* (*ib.* 577). Her husband must have been

Married woman suing and being sued before the

§ 1 (2). Act of 1870.

a party, *Hancock* v. *Lablache* (3 C. P. D. 197); *Atwood* v. *Chichester* (3 Q. B. D. 722, C. A.), unless he was banished or a convict. He was generally joined as a defendant, *Wake* v. *Parker* (2 Keen, 59); *England* v. *Downs* (1 Bea. 96); *Owden* v. *Campbell* (8 Sim. 551), but where he had no adverse interest he might, it seems, be made co-plaintiff, *Beardmore* v. *Gregory* (2 H. & M. 491); *Re Osborne* (W. N. (1878) 179, M. R.); but see *Roberts* v. *Evans* (7 C. D. 830). If the husband was not co-plaintiff, the wife must have sued by her next friend, who must show his authority if challenged, *Schjott* v. *Schjott* (19 C. D. 94, C. A.). Where the husband and wife are co-plaintiffs, or co-defendants, or he sues as her next friend, it is the husband's action, and the wife is not bound in respect of her separate property, *Hughes* v. *Evans* (1 S. & S. 185); *Turner* v. *Turner* (2 D. M. & G. 28). In a partition action there is some doubt as to how a married woman should give her consent where the husband is co-plaintiff, *Crookes* v. *Whitworth* (10 C. D. 289); *Wallace* v. *Greenwood* (16 C. D. 362); *Grange* v. *White* (18 C. D. 612). A next friend could not institute a suit without a solicitor, *Swann* v. *Swann* (W. N. (1880) 191, M. R.). But a married woman could sue *in formâ pauperis* without a next friend, *Wellesley* v. *Wellesley* (17 Sim. 59; 1 D. M. & G. 501).

Under the Divorce Act.

Under 20 & 21 Vict. c. 85, secs. 21 and 26, see Appendix p. 153, a married woman judicially separated from her husband, or having a protection order, is, for the purposes of suing and being sued, to be considered a *feme sole*, and under those sections she could present a petition without a next friend, *Rainsdon's Trusts* (4 Drew. 446), and bring an action for libel in her own name, *Ramsden* v. *Brearley* (L. R. 10 Q. B. 147), and this is not, it is submitted, superseded by the Act of 1882. But she must obtain a protection order before

she brings the action, *Midland Railway Company* v. *Pye* (10 C. B., N. S. 179). **§ 1 (2).**

Under Order XVI. r. 8 of the Rules of the S. C., married women might, by leave of the Court or a judge, sue or defend without their husbands and without next friends, on giving such security (if any) for costs, as the Court or a judge might require; but this Order as to suing, will, it is submitted, be superseded by the present Act, except in cases where the husband and wife are actually joined as defendants. For the practice under rule 8, see *Roberts* v. *Evans* (7 C. D. 830). As to security for costs, see *Noel* v. *Noel* (18 C. D. 510), where a married woman with ample means was not required to give security; *Martano* v. *Mann* (14 C. D. 419); *Brown* v. *North* (9 Q. B. D. 52, C. A.). The rule as to giving security for costs is in general the same as that on appeal; but where the married woman's separate property is subject to a restraint on anticipation, security must, it seems, be given, because such property could not be reached, *Brown* v. *North* (*ubi supra*). In *Kingsman* v. *Kingsman* (6 Q. B. D. 122, C. A.), it was held that leave could be given to defend separately after the commencement of the action, and that the rule applied where the married woman was suing as trustee. Under Order XVI. r. 8.

Under the Act of 1870, section 11, see Appendix, p. 148, a married woman could maintain an action in her own name, without joining her husband or a next friend, for the recovery of any wages, earnings, money, and property by that Act declared to be her separate property, or of any property belonging to her before marriage, and which her husband had by writing under his hand agreed with her should belong to her after marriage as her separate property; but for any other separate property she must still have sued by next friend. The Act of 1870 contained no power of suing her separately, and the husband had Under sec. 11 of the Act of 1870.

§ 1 (2). still to be joined in order to charge property declared to be her separate property by the Act, *Hancock* v. *Lablache* (3 C. P. D. 197); *London Pro. Bank* v. *Bogle* (7 C. D. 773); *Atwood* v. *Chichester* (3 Q. B. D. 722, C. A.); but see *Mercier* v. *Williams* (9 Q. B. D. 339, 377). Where the husband was only a formal party, he was allowed his costs; *Wright* v. *Chard* (4 Drew. 702); *Kevan* v. *Crawford* (6 C. D. 29); but see *Re Osborne* (W. N. ('78), 179).

Under the Act of 1882.

Under this section a married woman can sue, or be sued, in contract or tort, in her own name without her husband being made a party; and under section 12 below, p. 95, has in her own name against all persons whomsoever, including her husband, the same civil remedies for the protection and security of her own separate property, as if such property belonged to her as a *feme sole*. But these enactments will not apparently confer any new right or liability upon her as to contracts or torts entered into or committed before the Act, but will only alter the mode of suing, and her liability for costs, *Midland Railway Company* v. *Pye* (C. B., N. S. 179, 192). It was held before the Act of 1882, that though she had leave to sue alone, the married woman could not maintain an action against a third party for property belonging to her before her marriage which her husband did not claim, *Kingsman* v. *Kingsman* (6 Q. B. D. 122), *dissentiente* Brett, L. J., *secus* as to property of which she was trustee. Every case of a married woman suing seems to be covered by this section and section 12; see p. 95; so that a next friend will be no longer necessary, at any rate where it is an action in respect of separate estate, nor will it be proper to join the husband in such action, except where the husband and wife are both suing, or being sued. And claims by, or against, husband and wife may be joined with claims by, or against, either of them separately, under Order XVII.

rr. 4 and 7. And as to a joint action against husband and wife, under section 15, see note (*c*), p. 113. Where the husband and wife are joined as defendants, the wife will still be able to obtain leave to defend separately, under Order XVI. r. 8. Leave to defend separately has been granted; where the married woman claims an adverse interest, *Noel* v. *Noel* (13 C. D. 510); or is living separately from her husband, *Rudge* v. *Weedon* (7 W. R. 368); or if he is insane, *Estcourt* v. *Ewington* (9 Sim. 252), and cases there collected; or she disapproves of the defence, *Ex parte Halsam* (2 Atk. 50); or denies the marriage, *Wyborn* v. *Blunt* (1 Dick. 155); and where the husband is out of the jurisdiction, and in contempt, *Bunyan* v. *Mortimer* (6 Madd. 278); but not where he was in prison, *Anon.* (2 Ves. Jun. 332); and it has been granted on the application of the husband to save him from the consequences of the contempt of a wife out of the jurisdiction, *Nichols* v. *Ward* (2 M. & G. 140). § 1 (2).

Under Order IX. r. 3, when husband and wife are both defendants to the action, service on the husband shall be deemed good service on the wife, but the Court or a judge may order that the wife shall be served with or without service on the husband. Substituted service on the husband was ordered under this rule, *Whitley* v. *Honeywell* (24 W. R. 851). Under the old rules service on the husband was good service on the wife, where the husband was in prison for debt, *Holcombe* v. *Trotter* (9 Jur. 637). *Quære* where they were living separate (*ibid.*), *Hope* v. *Carnegie* (L. R. 7 Eq. 254). Service.

Service on the husband is good service on the wife out of the jurisdiction, *Steele* v. *Plomer* (1 M. & G. 83; 2 Ph. 782 n. If out of the jurisdiction, she might be served with process by leave under 4 & 5 Will. IV. c. 82, *Copperthwaite* v. *Tinte* (13 Ir. Eq. 68), see now R. S. C. Order XI.

§ 1 (2). And where her husband was joined she could not before the Act, and it is submitted cannot now, defend separately without an order, *Higginson* v. *Wilson* (11 Jur. 1071); *Heygate* v. *Thompson* (L. R. 8 Eq. 354). The husband can make his wife defendant in a question as to her separate estate, *Brooks* v. *Brooks* (Prec. in Ch. 24); but by doing so he admits it to be separate estate, *Earl* v. *Ferris* (19 Beav. 67), and no order is in this case necessary before she puts in her defence, *Ex parte Strangeways* (3 Atk. 478); and the wife may sue her husband in respect of her separate property, *Green* v. *Green* (5 Hare, 400 n.); *Wood* v. *Wood* (19 W. R. 1049), or proceed under section 17, see p. 115. The words of the sub-section are wide enough to give the married woman power of suing in her own name, whether she has separate property or not, and it will be a question whether, in proceedings not relating to her separate property; as where the suit related to the execution of a power vested in her, *Hope* v. *Fox* (1 J. & H. 456); or to the redemption of a mortgage on her real estate, *Smith* v. *Etches* (1 H. & M. 558, 711); or where she was administratrix, *Burdick* v. *Garrick* (5 Ch. 233); it will be necessary, as it was before the Act, to join a next friend or her husband. The wife is not a necessary party in an action to charge her husband's interest in her real property, *Waugh* v. *Wren* (11 W. R. 244). A married woman having separate property had a right to sue by her next friend, and now it is submitted she may sue alone, without waiting to have trustees appointed where none existed, or where existing trustees refused to act, *Macbryde* v. *Eykyn* (W. N. ('67) 306). A married woman not pleading coverture, or producing no evidence of it, will be treated as a *feme sole*, *Poole* v. *Canning* (L. R. 2 C. P. 241); *Dillon* v. *Cunningham* (L. R. 8 Ex. 23).

Husband and wife suing.

Payment Her separate examination is not necessary before pay-

ment out of court of a sum to which she is entitled to her separate use, and if it was hers absolutely, not even if she asked to have it paid to her husband, *Re Crump* (34 Beav. 570); but see *Wordsworth* v. *Dayrell* (4 W. R. 689); and Form II., Appendix; but there must be an affidavit of no settlement, *Anon.* (3 Jur. N. S. 839). And a sum of residue given to her separate use will be paid out of court to a married woman in spite of a general restraint on anticipation applying to all gifts in a will, *Re Croughton's Trusts* (8 C. D. 460); but not property producing income, *Re Ellis's* (L. R. 17 Eq. 409). **§ 1 (2).** out of Court.

There is nothing in the words of the section to prevent a wife suing her husband for a personal tort, but she is prevented from doing so by section 12, except for the protection and security of her separate property. As to the old law, see *Phillips* v. *Barnet* (1 Q. B. D. 436). As to criminal proceedings see section 12. Tort; suing husband.

A married woman with separate property was always bound by the proceedings as if she were a *feme sole*, *Allen* v. *Papworth* (1 Ves. Sen. by Belt, 91); *Clerk* v. *Miller* (2 Atk. 379); *Beeching* v. *Morphew* (8 Hare, 129); *Clive* v. *Carew* (1 J. & H. 199); *Callow* v. *Howle* (1 De G. & Sm. 531); and she might be attached when she answered separately, *Graham* v. *Fitch* (2 De G. & Sm. 246); *Taylor* v. *Taylor* (12 Beav. 271); *Ottway* v. *Wing* (12 Sim. 90); *Home* v. *Patrick* (30 Beav. 405); and not otherwise, *Bunyan* v. *Mortimer* (6 Madd. 278); *Home* v. *Patrick* (10 W. R. 239); *Bull* v. *Withey* (9 Jur. N. S. 595); and her separate property may perhaps be sequestrated, *Keogh* v. *Cathcart* (12 Ir. Eq. 215). For order to give undertaking for damages, *Holden* v. *Waterlow* (15 W. R. 139); *Marston* v. *Smith* (W. N. ('77) 169). There is no doubt that an injunction can be enforced against a married woman, *Hope* v. *Carnegie* (L. R. 7 Married woman bound by proceedings.

§ 1 (2). Eq. 254, 261); *Warne* v. *Routledge* (L. R. 18 Eq. 497); *Nat. Prov. Bank* v. *Thomas* (24 W. R. 1013). And where the wife was out of the jurisdiction and out of the control of her husband, he was not held liable for her breach of an injunction, though they were defending jointly, *Hope* v. *Carnegie*, *ubi supra*.

No personal judgment against her.

The Court would not before the Act enforce judgment against a married woman personally, *Hulme* v. *Tennant* (1 Bro. C. C. 16, 21); *Atwood* v. *Chichester* (3 Q. B. D. 722, 725, C. A.); *Ex parte Jones* (12 C. D. 484); *Davies* v. *Ballenden* (W. N. (1882) 92, C. A.); *Durrant* v. *Ricketts* (8 Q. B. D. 177); and see note to section 1 (5), p. 64. And judgment could not be signed against her under Order XIV. r. 1*a*., *Ortner* v. *Fitzgibbon* (50 L. J. Ch. 17); *Durrant* v. *Ricketts* (8 Q. B. D. 177); and see *Macqueen* v. *Turner* (30 W. R. 80); and Form IX., Appendix; the practice was to order an inquiry as in *Pike* v. *Fitzgibbon* (17 C. D. 454). And where the property sought to be charged is in the hands of trustees, who are not parties, there can only be an order charging the separate property generally, and without prejudice to the trustees. Compare and consider *Davis* v. *Jenkins* (6 C. D. 728), V.-C. H.; *Collett* v. *Dickenson* (11 C. D. 687), Fry, J.; *Flower* v. *Buller* (15 C. D. 665), Denman, J.; and see Form X., Appendix.

Statutes of Limitation do not apply to separate property.

The Statutes of Limitation were said not to apply to actions in respect of separate property, in *Norton* v. *Turvil* (2 P. Wms. 144), "because the separate estate of "the *feme covert* was a trust estate for the payment of "debts, and a trust was not within the statutes." This old case was approved in *Vaughan* v. *Walker* (8 Ir. Ch. Rep. 458), Blackburne, L.J. of Appeal *dissentiente*, and by Bacon, V.-C., in *Hodgson* v. *Williamson* (15 Ch. D. 87). It might perhaps be held that separate property under the Act is no longer a trust, but a legal estate.

§ 1 (2).

Tort.—Before the Act of 1882 the husband and wife were, during coverture, both liable for her torts, but the husband must be joined in order to charge him, *Liverpool, &c.* v. *Fairhurst* (9 Ex. 422, 429); and the husband is liable, even if she is living apart, unless in adultery, *Head* v. *Briscoe* (5 C. & P. 484); but he is not, and she is, liable if she is divorced; or if there is a judicial separation, or if she has a protection order, 20 & 21 Vict. c. 85, sec. 21, 25. See Appendix, p. 153. After her husband's death the married woman was liable, *Vine* v. *Saunders* (4 Bing. N. C. 96). And the Acts of 1870 & 1874 (see Appendix, pp. 141, 150) did not render her liable for her ante-nuptial torts, but only her debts; see note to section 13, p. 99. For the torts of his wife the husband was, and is still, liable, *Catterall* v. *Kenyon* (3 Q. B. 310, 315); *Keyworth* v. *Hill* (3 Bar. & Ald. 685), the Act making no difference in this respect, but apparently leaving it at the option of the plaintiff whether he will join the husband or not. The husband is only liable during coverture, *Heard* v. *Stamford* (3 P. Wms. 409); but on his death his estate is liable for the defaults of his wife committed during marriage, *Smith* v. *Smith* (21 Beav. 385). After the death of the wife he is still liable, if she acted as his express agent (Addison, Torts, 108). No action can be maintained against a married woman, or her husband, where she falsely represented herself a *feme sole, Liverpool, &c.* v. *Fairhurst* (9 Ex. 422); or that the signature on a bill of exchange was her husband's, *Wright* v. *Leonard* (11 C. B., N. S. 258). If the husband and wife are jointly sued for tort, it is presumed that there will be a joint judgment against the husband personally, and against the separate estate of the wife. As to the liability of husband and wife for the wife's ante-nuptial torts, see sections 13 and 14, pp. 98, 104.

Married woman not liable in tort before the Act of 1882.

(*d*) A married woman could be condemned in costs

Costs of a

§ 1 (3). before the Act, and the order enforced on her separate estate, *Morris* v. *Freeman* (3 P. D. 65). The costs of an unsuccessful action in respect of separate property were enforced against it, *Re Pugh* (17 Beav. 336); *Barlee* v. *Barlee* (1 S. & S. 100); *Murray* v. *Barlee* (4 Sim. 82); *McHenry* v. *Davis* (L. R. 10 Eq. 88); *Morrell* v. *Cowan* (6 C. D. 166), and conversely in favour of the married woman, *Kevan* v. *Crawford* (6 C. D. 29).

married woman.

(3.) Every contract entered into by a married woman shall be deemed to be a contract entered into by her with respect to and to bind her separate property, unless the contrary be shown.

Married woman's contracts; onus of proof.

Property includes choses in action under section 24, p. 137. Before the Act, if a married woman was sued on her contract it was for the plaintiff to show that it was entered into on the faith of her separate property. (See Introduction, p. 25; *London Chartered Bank* v. *Lemprière*, 4 P. C., at p. 597). The onus is now upon the married woman to show it was not. It is a question of fact, *Johnson* v. *Gallagher* (3 D. F. & J. 494, 515). If the married woman has separate property, the only way she can prove that there was no contract on the faith of it, is to prove that she contracted as agent for her husband. It will probably be held that if the contract of the wife is such as would bind the husband at common law, the presumption created by this section is rebutted.

The husband is not rendered liable for his wife's contracts by the Act, and outside it he is only liable for them where she has his authority to pledge his credit.

Where the

She has this authority for necessaries and domestic pur-

§ 1 (3).

husband is liable, the onus will be on the creditor.

poses. (1.) Where they are living together she has authority, unless the husband, with or without notice to the creditor, has revoked it, *Debenham* v. *Mellon* (6 App. Ca. 24); and here the onus lies on the husband to show there was no authority, *Phillipson* v. *Hayter* (L. R. 6 C. P. 38); *Lane* v. *Ironmonger* (13 M. & W. 368); (2.) Where they are living apart, it is for the creditor to show that there was authority to pledge the husband's credit. If they are living apart through the husband's default, the wife has authority to pledge his credit, *Hodges* v. *Hodges* (1 Esp. 441); and if by consent, the jury may infer that the husband did not intend to leave the wife without the means of subsistence, and therefore may imply an authority, *Johnston* v. *Sumner* (3 H. & N. 261). But it is a question whether they could be left to imply an authority on that ground, if the wife had sufficient separate property to live on. If they are living apart through the wife's default, there is no authority to pledge the husband's credit, *Ham* v. *Toovey* (S. N. P. 268); but the adultery of the wife, if it is not the cause of separation, is no defence against the creditor, if there has been no dissolution of the marriage, *Needham* v. *Bremner* (L. R. 1 C. P. 583). If the wife has consented to an allowance she must abide by it, and has no authority to pledge her husband's credit, *Eastland* v. *Burchell* (3 Q. B. D. 432). And if an annuity under a separation deed cannot be obtained, and a stranger supply necessaries to the wife, her separate property is liable, *Hodgson* v. *Williamson* (15 C. D. 87). Necessaries include the means of living in accordance with the rank of the husband, *Hunt* v. *Blaquiere* (3 M. & P. 108); but not goods supplied for the wife's separate business, *Smallpiece* v. *Dawes* (7 C. & P. 40); nor luxuries, *Phillipson* v. *Hayter* (L. R. 6 C. P. 38).

Expenses incurred by the wife preliminary and in-

§ 1 (3). cidental to a suit for the restitution of conjugal rights, or to obtain a judicial separation or dissolution of marriage, could be recovered from the husband, or, after his death, from his estate, as necessaries for which she had his implied authority to pledge his credit, *Wilson* v. *Ford* (L. R. 3 Ex. 63); *Stocken* v. *Pattrick* (29 L. T., N. S. 507); *Brown* v. *Ackroyd* (5 E. & B. 819); *Re Hooper* (2 D. J. & S. 91); *Ottaway* v. *Hamilton* (3 C. P. D. 393); and so could money advanced to a deserted wife for her support, *Deare* v. *Soutten* (L. R. 9 Eq. 151); *Jenner* v. *Morris* (3 D. F. & J. 45); or for medical expenses, *Beale* v. *Arabin* (36 L. T., N. S. 249); or necessaries supplied to a child living with the mother, by an order under 2 & 3 Vict. c. 54, *Bazley* v. *Forder* (L. R. 2 Q. B. 569). But the executor cannot be charged for necessaries supplied after the death of the husband, though the death was at the time of contract unknown to both the wife and creditor, *Blades* v. *Free* (9 B. & C. 167). Money advanced to the wife of a lunatic for necessaries may be recovered from his estate, *Re Woods* (1 D. J. & S. 465); but see *contra*, *Richardson* v. *Dubois* (L. R. 5 Q. B. 51). The husband was not liable where the wife represented herself a *feme sole* in order to contract, *Liverpool, &c.* v. *Fairhurst* (9 Ex. 422). The wife was held not to have pledged her separate estate where she was living in an hotel with her husband, and was not liable on the bill, *Re Bromley* (21 W. R. 155); and where she signed an annuity deed, but did not join in the operative parts, she was held not to have disposed of her separate property, *Tullet* v. *Armstrong* (4 Bea. 319, 4 M. & C. 390).

(4.) Every contract entered into by a married woman with respect to and to bind her separate pro-

perty shall bind not only the separate property which she is possessed of or entitled to at the date of the contract, but also all separate property (*a*) which she may thereafter acquire (*b*). **§ 1 (4).**

Liability of married woman on contracts and breaches of trust.

(*a*) Contract includes the acceptance of any trust under section 24; so that for contracts entered into, and breaches of trust committed, since the Act, a married woman will be liable to the extent of, not only the separate property to which she was entitled at the time of the contract or breach of trust, but also to the extent of any separate property which may have accrued to her up to the time of judgment recovered. The section does not expressly include general torts in its operation, but it is submitted that for her torts as well as her breaches of trust a married woman will be liable to the extent of the separate property she possesses at the time of execution. Her property not held to her separate use was held liable for her fraud, *Hobday* v. *Peters* (28 Bea. 354, 360), and see note (*i*), p. 35 above, and it is conceived that all the separate property of a married woman will be liable for her torts under section 1, subsection (2). The *ratio decidendi* in the case of *Pike* v. *Fitzgibbon* (17 C. D. 454), except as to restraint, does not apply to torts. Nor does it apply to ante-nuptial liabilities which, though not within this section, bind the whole of the separate property existing at the time of execution both under this Act and the Act of 1870, *Sanger* v. *Sanger* (L. R. 11 Eq. 470). See note (*a*) to section 13 below, p. 101.

(*b*) Separate property, where there is a restraint on anticipation, is not bound by the contracts of a married woman made during the coverture, even after the death of her husband, *Pike* v. *Fitzgibbon* (17 C. D. 454); *secus*

§ 1 (5). ante-nuptial contracts, *Sanger* v. *Sanger* (L. R. 11 Eq. 470); see note (*b*) to section 19, below, p. 127. Property includes choses in action under section 24. It is submitted that the word "acquire" would not include reversionary property; see cases collected in note (*b*), section 2, below, p. 68.

(5.) Every married woman carrying on a trade separately from her husband shall, in respect of her separate property, be subject to the bankruptcy laws in the same way as if she were a feme sole.

Married woman could not be made bankrupt before the Act of 1882.

It was attempted to make a married woman bankrupt under the Act of 1870, and L. J. Mellish once expressed an opinion that she could be made bankrupt if she had separate estate, *Ex parte Holland, Re Heneage*, (9 Ch. 307); but it was held by the Court of Appeal, in *Ex parte Jones* (12 Ch. D. 484), that neither before nor under the Act of 1870 could a married woman be made bankrupt unless she was within the custom of the City of London, *Lavie* v. *Philips* (3 Bur. 1776), or was the wife of a convict, *Ex parte Franks* (7 Bing. 762).

Bankruptcy under the Act of 1882.

There seems to be some difficulty in determining whether under this Act it was intended to make a married woman liable to bankruptcy. The fact that this section makes separate traders liable to it, seems to point to the intention that other married women should not become liable. But the powers of suing her under section 1, sub-section (2), are the widest possible, unless they are narrowed down by the reference to separate property as to costs and damages. In *Ex parte Jones* (12 C. D. 484) the married woman could not have been personally sued, and the whole reasoning of the Lords Justices seems to have proceeded on that ground. L. J.

James almost seemed to be of opinion that there might have been a bankruptcy of a married woman sued under section 12 of the Act of 1870. On the whole, however, and especially since the property of a woman married before the Act not held to her separate use seems not to be made liable for her contracts or torts, it is submitted that the married woman is not even now personally liable for her debts, and therefore cannot be made a bankrupt, except under this 5th sub-section. It is just conceivable that the woman married after the Act might be held personally liable, while the woman married before it was not. **§ 1 (5).**

As to what is carrying on a trade separately from her husband, see *Ashworth* v. *Outram* (5 C. D. 923), where the whole subject is discussed. There the wife had before marriage been engaged in a trade. On marriage the husband had acquiesced in her carrying it on without his interference, and it was held that independently of the Act of 1870, the proceeds and stock in trade were the wife's separate property. See also *Slanning* v. *Style* (3 P. Wms. 334), where the wife made a profit out of certain produce of the farm, but compare *Mews* v. *Mews*, (15 Bea. 529). After the death of the husband the evidence of the wife must be corroborated, *Re Whitaker* (W. N. (1882) 71), as in other cases of claims on the estate of a deceased person. A private hotel carried on by the wife was a separate business, *Wood* v. *Wood* (19 W. R. 1049), and a business was held to be separately carried on by the wife under somewhat similar circumstances, *Smallpiece* v. *Dawes* (7 C. & P. 40); see also *Pearse* v. *Pearse* (W. N. (77) 120); but where the husband made himself personally liable as the agent of the wife it was held to be his business, *La Porte* v. *Costick* (23 W. R. 131). As to a business carried on by the wife in her maiden name without any interference of the husband though he Separate trading.

§ 1 (5). lived in the same house, see *In re Shepperd* (10 C. D. 573). Where the wife carried on the husband's business by means of money lent her while the husband was incapable of doing anything, it was held her separate business. *Lovell* v. *Newton* (4 C. P. D. 7).

The business must be lawful.

To make a business a separate business as between husband and wife, it was held that the separate business must be lawful, *Mason* v. *Mitchell* (3 H. & C. 528), and it is submitted that this would be a reason for holding that the woman did not come within this section.

§ 2.

Property of a woman married after the Act to be held by her as feme sole.

2. Every woman who marries after the commencement of this Act shall be entitled to have and to hold as her separate property and to dispose of in manner aforesaid all real and personal property which shall belong (*a*) to her at the time of marriage, or shall be acquired by or devolve upon her after marriage (*b*), including any wages, earnings, money, and property gained or acquired by her in any employment, trade, or occupation, in which she is engaged, or which she carries on separately from her husband, or by the exercise of any literary, artistic, or scientific skill (*c*).

As to the legal estate.

(*a*) There will be a distinction between property held by trustees upon trust for the separate use of a married woman, and property given her directly, whether for her separate use or otherwise. In the former case the settlement and any restraint on anticipation remain unaffected by the Act under section 19, p. 125, and the trustees will hold the legal estate. In the latter case, where at present the husband takes the legal estate on

§ 2.

an implied trust for his wife, it may be a question whether after the commencement of the Act the legal estate will vest in the wife, or as formerly (*Bennet* v. *Davis*, 2 P. Wms. 316) in the husband, see note (*a*), section 1, sub-section (1), p. 44, and note (*a*), section 19, p. 126; and at any rate any property coming to the wife without any trust for her separate use will vest in her both at law and in equity under this section. In the case of any property the *corpus* of which is held for her by trustees, whether or not for her separate use, the wife is able to call for the legal estate from the trustees. In *Peters* v. *Lewes, &c., Co.* (18 C. D. 429), at p. 437, the Master of the Rolls said: "There is no distinction, to my mind, between a trustee for a married woman absolutely entitled for her separate use, and not restrained from anticipation, and a trustee for a man."

The separate use arises on each successive marriage.

The trust for the separate use of a feme sole or married woman, unless confined to a particular husband, arises on every successive marriage, *Tullett* v. *Armstrong* (4 My. & C. 390), and cases collected in Lewin, 7th ed. 646, unless the property has been converted during discoverture, *Wright* v. *Wight* (2 J. & H. 647). But now, if the separate use does not attach under the settlement it will take effect under this section, and it will no longer be material, except if it became necessary to decide whether the separate use arose under the settlement or the Act, whether the woman has converted the property when sole or not. In *Wright* v. *Wright* a sum of stock was bequeathed to the separate use of a feme sole without the intervention of a trustee. She sold it out, disposed of part, and reinvested the remainder, and then married. It was held that the separate use no longer attached.

Fraud on marital right no longer possible.

This section will put an end to the doctrine of fraud on marital right, *Strathmore* v. *Bowes* (1 Wh. & T. 446). The wife on any future marriage, in the absence

§ 2. of a settlement, will have complete dominion over her own property to the entire exclusion of the husband, and therefore there can be no fraud in her making any settlement she likes without the concurrence of her husband. There might be cases in which the intended wife might conceal the fact that she possessed property at all, see *Goddard* v. *Snow* (1 Russ. 485), in order to avoid any question of settlement upon the husband; but it is not easy to see what the husband's remedy would be. At any rate it is impossible that, where there is no longer any marital right, there can be any fraud upon it.

This section does not affect settlements; as to what is a settlement, see note (*a*) to section 19, p. 126.

Trust property.

As to whether the section applies to property given to the married woman on trust, and in which she has no beneficial interest, see note (*b*) to section 1, sub-section (1), p. 45.

(*b*) The section makes it impossible that the husband can in future take anything in his marital right during the coverture, though he can still take in his marital right, and as his wife's administrator, after her death, see Introduction, p. 36. Under the Act of 1870, only a very limited proportion of the property devolving on the wife during coverture became her separate property, see sections 7 and 8 of the Act of 1870, Appendix, p. 145, and note (*a*) to section 5, below p. 73. It was held upon the words of the Divorce Act, sections 21, 25 and 26, see Appendix, p. 153, that property which the married woman "may acquire, or which may come to or devolve upon her," did not include choses in action not reduced into possession, *Re Insole* (L. R. 1 Eq. 470); *Johnson* v. *Lander* (L. R. 7 Eq. 228); *Coward and Adams' Purchase* (L. R. 20 Eq. 179); *Nicholson* v. *Drury, &c.* (7 C. D. 48). If these decisions had applied to this section and section 5, the married woman's chose

The husband can no longer take anything in his marital right.

§ 2.

in action would not have been within the sections, but the word "property" is, by section 24, to include choses in action. So that a married woman will hold as her separate property her choses in action, whether belonging to her at the time of marriage, or acquired by or devolving upon her after marriage. And on these words it would be impossible to hold that the choses in action did not "devolve" upon her until they ceased to be choses in action. As to reversionary interests, if they do not "devolve" upon her while reversionary, they must "devolve" upon her under this section as soon as they fall into possession.

Equity to a settlement obsolete.

A married woman will no longer need to apply for an equity to a settlement, as the husband no longer takes anything during coverture. The property in future coming to a woman during coverture becomes the separate property of the wife, both under this section and section 5, and the whole doctrine of equity to a settlement is in future obsolete.

The separate business of the wife.

(*c*) Under the Act of 1870, section 1, see Appendix, p. 141, which is practically identical with this part of the present section, a question was raised whether the stock-in-trade of a business carried on by a married woman separately from her husband, which had been acquired by her previously to the marriage, became her separate property under that Act, as well as the wages and earnings gained by the trade subsequently to the marriage, *Ashworth* v. *Outram* (5 C. D. 923), and see note (*b*) to section 5, p. 77. No such question could be raised under this section, for the stock-in-trade acquired before marriage would become the separate property of the wife, as part of the property which belonged to her at the time of marriage, and if it were acquired by her after marriage the section also makes it her separate property. And it cannot be any longer liable to the

§ 2. husband's creditors, as it might have been before, see note (*b*), section 5, below, p. 77 ; as to what has been held to be separate trading, see above, note to section 1 (5), p. 65 ; and where the husband carried on a business in which the original stock-in-trade was the wife's, it was held that the substituted stock was the wife's also, *England* v. *Downs* (6 Bea. 269). The business must be lawful to entitle the wife to the proceeds, *Mason* v. *Mitchell* (3 H. & C. 528). The husband will be restrained from interfering with the separate business of the wife, *Wood* v. *Wood* (19 W. R. 1049) ; *Green* v. *Green* (5 Ha. 400 *n*).

Husband not liable for her contracts in the separate business.

It seems to have been thought at one time that the husband would be liable, both at law and in equity, for the contracts of his wife with respect to her separate business, 2 Roper's Husb. and Wife, Jacobs' ed., p. 175 ; but since Roper was written it has been decided in *Smallpiece* v. *Dawes* (7 C. & P. 40), that he is not liable, unless he has made his wife his agent, and his wife is, independently of express authority, only his agent for necessaries, *Manby* v. *Scott* (2 Sm. L. C. 445), and, therefore, not for the purposes of trade. It was held in *Laporte* v. *Costick* (23 W. R. 131), that where the husband had made himself personally liable it could not be the separate business of the wife, and see *Ex parte Shepperd* (10 C. D. 573, C.A.) ; and where the wife fraudulently held herself out as a feme sole, the husband was not liable, *Liverpool, &c.* v. *Fairhurst* (9 Ex. 422). But on the other hand if the stock in trade is conveyed to trustees upon trust to allow the wife to carry on the business, she does so as their agent, and they are liable on her contracts, 2 Roper, 175. As to wages and earnings see further note (*b*), section 5, p. 77.

Loans by wife to husband.

3. Any money or other estate of the wife lent or entrusted by her to her husband for the purpose of

any trade or business carried on by him, or otherwise, shall be treated as assets of her husband's estate in case of his bankruptcy, under reservation of the wife's claim to a dividend as a creditor for the amount or value of such money or other estate after, but not before, all claims of the other creditors of the husband for valuable consideration in money or money's worth have been satisfied. § 3.

This is a new provision, and in attempting to do justice to the husband's creditors seems to bear rather hardly upon the wife. Before the Act a married woman could lend to her husband, *Woodward* v. *Woodward* (3 D. J. & S. 672), and therefore could prove for a debt owing by her husband, like any other creditor. Now, a married woman lending or entrusting money to her husband, whether for business purposes, or otherwise, is postponed to the other creditors, so that it will be safer for the wife to lend money to anyone rather than her husband. It is presumed that this enactment will not apply to the secured debts of the wife. She is put in the same position with regard to the other creditors of her husband, as lenders of money for the purposes of trade, under 28 & 29 Vict. c. 86, section 5, who share the profits of the undertaking, or accept a rate of interest varying with the profits, and will be postponed to the creditors under that Act. It was held that that Act did not postpone a mortgagee, *Ex parte Sheil* (4 C. D. 789), and it is presumed that the principle of that decision will apply to this section.

A wife having separate property would be protected by the above statute, and if she, upon a contract in writing (or perhaps, since *Cox* v. *Hickman* (8 H. L. C. 268),

§ 3. without), lends her husband money on a rate of interest varying with the profits of the business, that will not *of itself* make her a partner. As to this question, and as to what will make a lender a partner, see Lindley, Partnership, 33 *et seq.*; *Pooley* v. *Driver* (5 Ch. D. 458). It may be a question whether a wife could under any circumstances be held a servant or agent under section 2, of 28 & 29 Vict. c. 86.

§ 4. Execution of general power.

4. The execution of a general power by will (*a*) by a married woman shall have the effect of making the property appointed liable for her debts and other liabilities in the same manner as her separate estate is made liable under this Act (*b*).

(*a*) It is to be observed that the power is not necessarily to be connected with a trust for separate use. Before the Act, where there was a trust for the separate use of the married woman for life, followed by a general power, it was settled after much conflict of opinion, see cases, Intro., p. 30, that the exercise of the power, by deed or will, rendered the property subject to the power assets, *London Chartered Bank* v. *Lemprière* (4 P. C. 572), which case has been followed ever since. But there was still some doubt as to whether, if the power was exercisable by will only, the exercise of it would render the property liable to the creditors of the married woman, see the remarks of L.J. Cotton on *Godfrey* v. *Harben* (13 C. D. 216), in *Pike* v. *Fitzgibbon* (17 C. D. 454, at p. 466. And now the exercise of any general power, whether connected with a trust for the separate use of the married woman or not, will render the property assets.

§ 4.

Will speaks from the death.

For the purposes of an appointment under a power the will has been held to speak from the death of the testator, under section 24 of the Wills Act, *Thomas* v. *Jones* (1 D. J. & S. 63); *Stillman* v. *Wedeon* (16 Sim. 26); *Cofield* v. *Pollard* (3 Jur. N. S. 1203; *Patch* v. *Shore* (2 Dr. & Sm. 589, 600); *Hodsdon* v. *Dancer* (16 W. R. 1101; W. N. ('68) 222). It is, therefore, submitted that a power exercised by will executed before the Act came into operation, by a person dying after it came into operation, will be within the section, and the property subject to it will be assets.

Liability.

(*b*) As to the liability of separate estate under the Act, see notes to section 1 (2), (4), (5), pp. 48, 63, 64, section 13, p. 98, and Introduction, p. 24.

§ 5.

Property acquired after the Act by a woman married before the Act to be held by her as a feme sole.

5. Every woman married before the commencement of this Act shall be entitled to have and to hold and to dispose of in manner aforesaid as her separate property all real and personal property, her title to which, whether vested or contingent, and whether in possession, reversion, or remainder, shall accrue after the commencement of this Act (*a*), including any wages, earnings, money, and property so gained or acquired by her as aforesaid (*b*).

Effect of secs. 7 and 8 of Act of 1870.

(*a*) At common law, all property falling into the possession of the wife during marriage became her husband's, see Introduction, p. 5, subject to her equity to a settlement, see Introduction, p. 9. Sections 7 and 8 of the Act of 1870, see Appendix, p. 145, only apply to women married after the passing of that Act, while the present section extends to all women, whether they were married before or since the Act of 1870. So that property, the

§ 5. title to which accrues after the 1st of January, 1883, to a woman married before the Act of 1870 will, if it comes to her, be her separate property, though property coming to her before that date will be her husband's.

Property under sec. 7.

The property given to the separate use of a married woman by sections 7 and 8 was also limited. Property coming to a married woman under section 7 is limited to (1), any personal estate, whatever its nature or value, *King* v. *Voss* (13 Ch. D. 504), to which, during coverture, she might become entitled, as next of kin, or one of the next of kin of an intestate; (2), to sums of money, not exceeding £200, to which, during coverture, she might become entitled, under any deed or will, but subject and without prejudice to the trusts of any settlement affecting the same. Under this section, "entitled" was held to mean "entitled in possession," *Lane* v. *Oakes* (22 W. R. 709, 30 L. T. 726), so that a reversionary fund, which belonged to a woman before marriage, and fell into possession afterwards, was within the Act. If two distinct sums, each under £200, come to the wife under the same instrument, they will, on the analogy of a covenant in a marriage settlement, both be held for her separate use, *Middleton's Will* (16 W. R. 1107); *Bower* v. *Smith* (L. R. 11 Eq. 279). As to what is money, see *Lowe* v. *Thomas* (5 D. M. & G. 315). In a will it has been held to include bank notes, exchequer bills, and other documents payable to bearer, possibly bills of exchange endorsed in blank, and money lent on mortgage, Jarm. 4th ed. 769, note (*e*); Theobald, 2nd ed. 144. It is to be observed, however, that it must be a *sum* of money, in order to entitle the wife to it under the 7th section. There is no decision on the point.

Property under sec. 8.

Property coming to a married woman under section 8 is limited to the rents and profits of any freehold, copy-

hold, or customary-hold property descending upon a woman as heiress, or co-heiress, of an intestate. The present Master of the Rolls expressed an opinion that the words "rents and profits" gave her the *corpus* of the property to her separate use, *King* v. *Voss* (13 C. D. 504). As to the effect of this, see Introduction, p. 16, above. As to property not within these sections, that is, property coming to her under deed or will, and being leaseholds, stock, sums of money over £200, and real property, the married woman was still left to claim her equity to a settlement, until the passing of the Act of 1882. It has not been decided whether these sections of the Act of 1870 apply to trust property, but see Act of 1882, section 1, sub-s. 1, note (*b*), p. 45. Mr. Dart thinks it doubtful whether section 8 extends to real estate, which after the passing of the Act descends upon a woman, who is at the time unmarried, but who subsequently marries, V. & P. 5th ed. 21. There is no decision on the point. Compare the language of section 7. Though, in future no property can be acquired under these sections, there must be a considerable amount of property to which they apply (section 22), and as to which questions may arise. Property acquired under them during one marriage would remain separate property if the woman married again, unless it was converted, see *Wright* v. *Wright* (2 J. & H. 647), and compare the language of this section with that of section 1 of the Act of 1870, Appendix, p. 141, and see note (*a*) section 2 of the Act of 1882, p. 66. But in future the separate use will arise under that section in any case. **§ 5.**

A woman could waive her right to property, within section 7 of the Act of 1870, by petition with her husband, *Lane* v. *Oakes* (22 W. R. 709 ; 30 L. T. 726).

The present section extends to every woman married Under the

§ 5. before the Act of 1882, whether before the Act of 1870 or not. It gives to her as her separate property all real and personal property (which includes choses in action under section 24), her title to which, whether vested or contingent, and whether in possession or remainder, accrues after the commencement of the Act. As to property given directly to her separate use after the Act, see note (*a*), section 1, sub-section (1), p. 44 ; note (*a*), section 2, p. 66 ; and note (*a*), section 19, p. 126. As to property given to her as trustee, see note (*b*), section 1, sub-section (1), p. 45.

Act of 1882.

There may perhaps be a question as to the effect of this section on property to which a married woman is entitled, contingently or in remainder, before the commencement of the Act. Such property would certainly not be her separate property until it vested or fell into possession, and she cannot dispose of it under the Act till then, but must still dispose of it by deed acknowledged under the Fines and Recoveries Act, as amended by the Conveyancing Act, 1882 (see Appendix, p. 159), or Malins' Act (see Appendix, p. 160). But it is submitted that, even where such property vests or falls into possession, it will not become separate property within the section ; for the title to it cannot be said to "accrue after the commencement of the Act." The title to the property accrued when the married woman became entitled contingently or in reversion. See *In re Pedder* (L. R. 10 Eq. 585) ; *In re Mackenzie* (2 Ch. 345).

Choses in action.

It was held under the Divorce Acts (see Appendix, p. 153), that choses in action are not acquired by, and do not devolve upon, or come to a married woman until they are reduced into possession, see cases note (*b*), section 2, p. 68 ; but this section is differently worded. Choses in action, the title to which accrues before the Act, will be the husband's, subject to the right of

survivorship in the wife, and it was recently held that the husband's interest in his wife's choses in action was not a mere possibility, but property subject to their being reduced into possession, *Re Biaggi* (W. N. (1882) 65). **§ 5.**

This section takes effect subject to any settlement. As to what is a settlement, see note (*a*) to section 19, p. 126. The wife's equity to a settlement is rendered obsolete by this section, and section 2, as to any property, the title to which accrues after the 1st of January, 1883, see Introduction, p. 9. Settlement.

(*b*) Under the Act of 1870, section 1, the wages and earnings of any married woman, acquired or gained by her after the passing of that Act, in any employment, occupation, or trade in which she is engaged, or which she carries on separately from her husband, and also any money or property so acquired by her through the exercise of any literary, artistic, or scientific skill, and all investments of such wages, earnings, money, or property, are to be deemed and taken to be property held and settled to her separate use independent of any husband to whom she may be married, and her receipts alone are to be a good discharge for such wages, earnings, money, and property, see Appendix, p. 141. The rights acquired under the Act of 1870 are saved by section 22 of the Act of 1882, and are continued to women married before the Act by this section. It was decided in *Ashworth* v. *Outram* (5 Ch. D. 923) that where the husband acquiesced in the wife carrying on a trade separately, the stock-in-trade acquired by her before marriage was her separate property, as well as the earnings gained in the business since the Act of 1870. And it would seem to follow from that case that if the husband were to allow the wife to put into her separate business property which he could have claimed in her right, such property would become part of the separate business. Wages and earnings under the Act of 1870 and this section.

§ 5. The decision in *Ashworth* v. *Outram* was governed more by the old rule in equity as to separate trading than by the Act of 1870, and L. J. Baggallay expressed an opinion that the Act of 1870 alone would not have given the stock-in-trade to the separate use of the married woman. Nor, it is submitted, would this section alone. Under section 2 everything belonging to her before marriage is her separate property, but it is otherwise here. So if a woman, married before this Act, took the stock-in-trade by the acquiescence of the husband after marriage, she could not hold it as against her husband's creditors, even if acquired since the Act of 1870, unless there was valuable consideration for it, 2 Rop. Husb. & Wife, 165. As to gifts between husband and wife generally, see note (*c*), section 10, below, p. 89. The husband is not liable for his wife's contracts in respect of her separate business, *Smallpiece* v. *Dawes* (7 C. & P. 40), though the contrary was once thought (see above, section 2, note (*c*), p. 69. And the husband will be restrained from interfering with the separate business of his wife, *Wood* v. *Wood* (19 W. R. 1049); *Green* v. *Green* (5 Ha. 400, n.). As to what is a separate business, see note to section 1, sub-section (5), above, p. 65, and note (*c*) to section 2, above, p. 69.

§ 6. As to stock, &c., to which a married woman is entitled.

6. All deposits in any post-office or other savings bank, or in any other bank, all annuities granted by the Commissioners for the Reduction of the National Debt or by any other person, and all sums forming part of the public stocks or funds, or of any other stocks or funds transferable in the books of the Governor and Company of the Bank of England, or of any other bank, which at the commencement of this Act are standing in the sole name of a married

woman, and all shares, stock, debentures, debenture stock, or other interests of or in any corporation, company, or public body, municipal, commercial, or otherwise, or of or in any industrial, provident, friendly, benefit, building, or loan society, which at the commencement of this Act are standing in her name (*a*), shall be deemed, unless and until the contrary be shown, to be the separate property of such married woman; and the fact that any such deposit, annuity, sum forming part of the public stocks or funds, or of any other stocks or funds transferable in the books of the Governor and Company of the Bank of England or of any other bank, share, stock, debenture, debenture stock, or other interest as aforesaid, is standing in the sole name of a married woman, shall be sufficient *primâ facie* evidence that she is beneficially entitled thereto for her separate use, so as to authorise and empower her to receive or transfer the same, and to receive the dividends, interest, and profits thereof, without the concurrence of her husband, and to indemnify the Postmaster-General, the Commissioners for the Reduction of the National Debt, the Governor and Company of the Bank of England, the Governor and Company of the Bank of Ireland, and all directors, managers, and trustees of every such bank, corporation, company, public body, or society as aforesaid, in respect thereof. § 6.

§ 6.

What investments are likely to be standing in her name.

(*a*) The investments, which are standing in the name of a married woman at the commencement of the Act, may be investments made with her separate property, investments made in her name by her husband or some other person, and investments under the Act of 1870. A married woman could invest her separate property outside the Act of 1870 in any corporation, company, or public body, the constitution of which did not prohibit a married woman from being a member, whether liability attached or not, *Mrs. Matthewman's case* (L. R. 3 Eq. 781); *Butler* v. *Cumpston* (L. R. 7 Eq. 16). An investment of money by the husband or a stranger in the name of a married woman is *primâ facie* evidence of a gift to her separate use, *Lucas* v. *Lucas* (1 Atk. 269); *Hayes* v. *Kindersley* (2 Sm. & Gif. 195); *Lloyd* v. *Pughe* (8 Ch. 88); but the intention to make such a gift must be clear, *Walter* v. *Hodge* (2 Swan. at p. 104); *Maclean* v. *Longlands* (5 Ves. at p. 78). And the investment must be the clear and distinct act of the husband, *Mews* v. *Mews* (15 Bea. 529), and for circumstances where the evidence showed a contrary intention, see *Lloyd* v. *Pughe* (14 Eq. 241, rev. 8 Ch. 88), and distinguish *Re Eykyn* (6 C. D. 115).

Investments under Act of 1870.

Under the Act of 1870, sections 2, 3, 4, 5, Appendix, p. 142, a married woman, or a woman about to be married, might apply to the bank, or compel, see *Reg.* v. *Carnatic Ry. Co.* (L. R. 8 Q. B. 299), the directors of any incorporated or joint-stock company, or the committee of management of any industrial and provident society, or the trustees of any friendly society, benefit building society, or loan society, duly registered, certified, or enrolled under the Acts relating to such societies respectively, to enter or register investments in her name, or intended name, as a married woman entitled to her separate use. These sections did not apply to trust

property, and the Act of 1870 gave the married woman no power to contract, nor, unless she had applied under these sections, to transfer investments without the concurrence of her husband, *Howard* v. *Bank of England* (L. R. 19 Eq. 295). **§ 6.**

Under the present section investments standing in the name of a married woman at the commencement of the Act, however they were so placed, are now, unless the contrary is shown, to be deemed her separate property; and until the contrary is shown she will be able to deal with them as such. The married woman can be restrained from dealing with them under R. S. C. Order XLVI., r. 2; and under r. 1, if it should be held that she can be made personally liable under the Act, see note (*a*), section 1 (2), p. 48. Investments made fraudulently with the husband's money, or made in fraud of his creditors, will not be separate property when the fraud is shown, see section 10, note (*a*), p. 89. The husband, or the person holding the property, may proceed under section 17 (see p. 115), but not the creditor. The creditor would, it is submitted, have to join both the husband and wife as defendants, for the onus of proof is thrown on him, and he could not be allowed to take possession of the property in the absence of the party to whom it *primâ facie* belongs, nor in the absence of the person who committed the fraud. The stakeholder is to be held harmless for the wife's dealings with the investment until it is shown not to be her separate property. The section will probably be held to apply where an investment held to her separate use is standing in the unmarried name of the married woman; but there may be some doubt whether or not the Act can be intended to take away the husband's rights in property which he has not reduced into possession before its commencement.

Investments standing in the name of the married woman.

§ 6.

The liability of married women on their investments.

The married woman is liable for investments of her separate property, though she could not under the Act of 1870 make any investments to which liability attached. But she could do so outside it, *Mrs. Matthewman's Case* (L. R. 3 Eq. 781); *Butler* v. *Cumpston* (L. R. 7 Eq. 16), and, of course, her liability will continue as to investments coming within this section, but she is not liable when her name was used for another person's investments, *Pugh* v. *Sharman* (L. R. 13 Eq. 566). Her separate property is liable to indemnify the trustees of her separate investments, *Butler* v. *Cumpston* (L. R. 7 Eq. 16).

Liability of husband for his wife's shares.

In the case of investments of the wife made before the Act of 1882, and therefore not within section 7, the husband will still remain liable as he was before. He is liable upon her investments made during marriage, even though he disapproved of the investments, and would have nothing to do with them, *Scarisbrick's Case* (Eur. Arb. L. T. 105); but only for losses during the coverture, unless he himself has become a member, *Kluht's Case* (3 De G. & Sm. 210). And where the company had no notice of the marriage of a female shareholder until the winding up, both husband and wife were held liable, *John Murgatroyd's Case* (Eur. Arb. L. T. 105). And the husband is liable upon his wife's investments made before marriage, unless there is a rule of the company against his participating, *Angas' Case* (1 De G. & S. 560); *Ness* v. *Angas* (3 Ex. 805); *Luard's Case* (1 De F. & J. 533). In *Ex parte Rhodes* (7 W. R. 510), they were neither of them held liable; and where the company accepted a wife, who had no separate estate, as a shareholder without any concealment on the husband's part, his estate was not held liable, *Re London, Bombay, &c.* (18 C. D. 581). And the Act of 1874 did not over-ride the 75th and 78th sections of the Com-

panies Act, 1861, by which the husband himself is made liable from the date of his marriage on his wife's shares held before marriage, *Ex parte Hatcher* (12 C. D. 284); and note (*b*) to section 14, p. 107. As to trust property, see note to section 8, p. 87. § 6.

7. All sums forming part of the public stocks or funds, or of any other stocks or funds transferable in the books of the Bank of England or of any other bank, and all such deposits and annuities respectively as are mentioned in the last preceding section, and all shares, stock, debentures, debenture stock, and other interests of or in any such corporation, company, public body, or society as aforesaid, which after the commencement of this Act (*a*) shall be allotted to or placed, registered, or transferred in or into or made to stand in the sole name of any married woman shall be deemed, unless and until the contrary be shown, to be her separate property (*b*), in respect of which so far as any liability may be incident thereto her separate estate shall alone be liable (*c*), whether the same shall be so expressed in the document whereby her title to the same is created or certified, or in the books or register wherein her title is entered or recorded, or not. § 7. As to stock, &c., to be transferred, &c., to a married woman.

Provided always, that nothing in this Act shall require or authorise any corporation or joint-stock company to admit any married woman to be a holder of any shares or stock therein to which any liability

§ 7. may be incident, contrary to the provisions of any Act of Parliament, charter, bye-law, articles of association, or deed of settlement regulating such corporation or company (*d*).

(*a*) This section applies to any woman, whether married before the Act or since, making investments after the commencement of the Act.

(*b*) A married woman has now full power to contract, and therefore the somewhat complicated provisions of the Act of 1870, sections 2–5, Appendix, p. 142, are no longer required, and are repealed, section 22. That Act gave a married woman no further power of contracting than she had before, *Howard* v. *Bank of England* (L. R. 19 Eq. 295), and it was there held that, although she was entitled to her separate use to a sum of Consols, under section 7 of that Act, she could not transfer them without the concurrence of her husband, until she had made an application to have them transferred into her own name under section 3. But under the present Act she is capable of entering into any contract in respect of her separate estate: section 1 (2), and therefore of dealing with investments as a *feme sole;* and it was perhaps unnecessary to give her a special power of transferring stock, &c., by section 6 and section 18, pp. 78 and 124. Where a married woman was entitled to the income of a fund in court for life, an order was made, with the consent of the husband and of the reversioner, to have the fund transferred into the name of the married woman under the Act of 1870, *Re Bartholomew* (W. N. ('70) 234; 19 W. R. 95). And as to payment out of Court, see *Frank* v. *Mackay* (Ir. R. 8 Eq. 93); but see *Butlin's Trusts* (W. N. ('70) 251), where the married woman was a ward of court. And it is presumed the practice of investing

sums in court in the sole name of the married woman will be continued under this section, Form III. See Appendix. § 7.

(*c*) The husband's liability for his wife's investments of separate property (as to which see above, note to section 6, p. 82) is hereby taken away, as far as investments made since the Act are concerned. And as to investments made before the Act, the husband can get rid of his liability by a reinvestment of the separate property of his wife, though whether, if he simply made his wife exchange shares in a company for which he was liable, for others in the same company, he would get rid of his liability, may be doubted. He is still, perhaps, liable for shares under the Companies Acts taken by the wife before marriage. The Acts of 1870-74 did not take away his liability for such shares under the 75th and 78th sections of the Companies Act, 1862, for the debt is by those sections made the debt of the husband and not of the wife, see *Ex parte Hatcher* (12 C. D. 284); but the Acts of 1870-74 did not refer to the Companies Acts as the present Act does, see further note (*b*) to section 14, p. 107. He will, at any rate, be liable for the investments of the wife married before this Act, see note (*a*) to section 6, p. 82; and as to husband's liability for trust property, see note to section 8, p. 87.

The husband no longer liable for his wife's investments.

In *Pugh* v. *Sharman* (L. R. 13 Eq. 566), it was held that, where her father had used a married woman's name for his investments without her knowledge, she was not liable as a contributory; and it is submitted that she would not be liable under this section on investments shown not to be her separate property.

The wife's liability.

(*d*) It is conceived that there would be no objection to a company altering its rules so as to exclude married women, in case of shares to which liability attaches. Independently of the Act, there is no reason why a

Where the constitution of the company prevents a married

§ 7. woman from being a member.

married woman should not invest her separate estate in a company whose rules allow it, although an unlimited liability attaches to the shares, *Mrs. Mattheuman's case*, (L. R. 3 Eq. 781).

§ 8. Investments in joint names of married women and others.

8. All the provisions hereinbefore contained as to deposits in any post-office or other savings bank, or in any other bank, annuities granted by the Commissioners for the Reduction of the National Debt or by any other person, sums forming part of the public stocks or funds, or of any other stocks or funds transferable in the books of the Bank of England or of any other bank, shares, stock, debentures, debenture stock, or other interests of or in any such corporation, company, public body, or society, as aforesaid respectively, which at the commencement of this Act shall be standing in the sole name of a married woman or which after that time, shall be allotted to, or placed, registered, or transferred to or into, or made to stand in, the sole name of a married woman, shall respectively extend and apply, so far as relates to the estate, right, title, or interest of the married woman, to any of the particulars aforesaid which, at the commencement of this Act, or at any time afterwards, shall be standing in, or shall be allotted to, placed, registered, or transferred to or into, or made to stand in, the name of any married woman jointly with any persons or person other than her husband.

§ 8.

Does the Act apply to trusts?

It would at first sight appear from this section, taken together with sections 1, 2, 6, 7 and 9, that the Act was intended to apply to trust property generally, and to make a married woman in future an eligible trustee; but see section 18, note p. 124; section 1, sub-section (1), note (*b*), p. 45, where the question is more fully discussed. It will probably be held that the present section at any rate does not apply to trusts, for section 18 makes special provisions for the transfer of trust investments. If it should be held that this section applies to trust property, the husband would not be liable for trust investments made since the Act (compare section 7, of which the provisions are incorporated with this section). If this section does not apply, he would still be liable; for section 24 does not take away his liability for trust investments, but only for breaches of trust. If, however, the section only applies to the beneficial interests of the married woman, the only effect of it will be to give to her separate use the investments which stand in, or are transferred into her name jointly with other persons in the same way as those which stand in her name only.

§ 9.

As to stock, &c., standing in the joint names of a married woman and others (*sic*).

9. It shall not be necessary for the husband of any married woman, in respect of her interest, to join in the transfer of any such annuity or deposit as aforesaid, or any sum forming part of the public stocks or funds, or of any other stocks or funds transferable as aforesaid, or any share, stock, debenture, debenture stock, or other benefit, right, claim, or other interest of or in any such corporation, company, public body, or society as aforesaid, which is now or shall at any time hereafter be standing in the sole name of any married

§ 9. woman, or in the joint names of such married woman and any other person or persons not being her husband.

The husband of a married woman need not join in the transfer of stock, &c., standing in her name.

The powers given to a married woman by section 1, sub-sections (1) and (2), were not apparently considered sufficient to enable her to transfer investments within sections 7 and 8 without her husband, but she is expressly empowered to do so by this section. Before the Act, a married woman could not transfer stock at the Bank without the concurrence of her husband, *Howard* v. *Bank* (L. R. 19 Eq. 295). It was otherwise under 20 & 21 Vict. c. 85, s. 21, where the woman had a protection order, *Bathe* v. *Bank of England* (4 K. & J. 564).

The marginal note given in the Act is not very happy.

§ 10. 10. If any investment in any such deposit or annuity as aforesaid, or in any of the public stocks or funds, or in any other stocks or funds transferable as aforesaid, or in any share, stock, debenture, or debenture stock of any corporation, company, or public body, municipal, commercial, or otherwise, or in any share, debenture, benefit, right, or claim whatsoever in, to, or upon the funds of any industrial, provident, friendly, benefit, building, or loan society, shall have been made by a married woman by means of moneys of her husband, without his consent (*a*), the court may, upon an application under section seventeen of this Act (*b*), order such investment, and the dividends thereof, or any part thereof, to be transferred and paid respectively to the husband ; and nothing in this Act contained shall give validity as against creditors of the

Fraudulent investments with money of husband (*sic*), [and frauds upon creditors.]

husband to any gift (*c*), by a husband to his wife, of any property, which, after such gift, shall continue to be in the order and disposition or reputed ownership of the husband, or to any deposit or other investment of moneys of the husband made by or in the name of his wife in fraud of his creditors; but any moneys so deposited or invested may be followed as if this Act had not passed (*d*). § 10.

(*a*) The Act of 1870 had provisoes against the fraudulent investments of the wife with moneys of the husband at the end of sections 2, 3, 4 and 5, almost in the same words as those of this section. If the investments are standing in the name of the wife, the onus of proof is by sections 6 and 7 thrown upon the husband, see pp. 81, 83; and as to what is the husband's money, see note (*a*), section 17, p. 120. (1) Fraudulent investment of husband's money by wife.

(*b*) Under section 17, not only the husband and wife, but the stakeholder may apply where there is any question between husband and wife, see note (*a*), section 17, p. 117.

(*c*) Gifts could before the Act only be made by the husband to the wife during coverture by a declaration of trust. He could not assign anything to her, and if he purported to do so the gift was invalid, *Baddeley* v. *Baddeley* (9 C. D. 113); and see *Richards* v. *Delbridge* (L. R. 18 Eq. 11); *Fox* v. *Hawkes* (13 C. D. 822); *In re Breton* (17 C. D. 416). As to the effect of the Act see Introduction, p. 8. And by declaring himself trustee the husband can make a good gift to his wife against himself and his representatives, though the property remains in the legal possession of the husband, *Grant* v. *Grant* (34 Beav. 623), but after the death of the husband (2) Gifts by husband to wife.

§ 10. there must be other evidence than that of the wife to support the gift, *Grant* v. *Grant*, *ubi supra*, and *Re Finch* (Kay, J., *Times*, 15th June, 1882, and 17th July, 1882); *Re Whittaker* (W. N. (1882) 71). But such gifts are not valid against the husband's creditors, and the same rule applies to gifts by acquiescence of stock-in-trade in the wife's separate business, which if it is by agreement before marriage is good against the creditor, but not otherwise (2 Rop. Husb. & Wife, 165). It has been held under the Bankruptcy Acts that the stock of the separate business, where the husband did not reside on the premises, was not in his "reputed ownership," *Ex parte Massey* (4 D. & C. 405); and see *Jarman* v. *Woolston* (3 T. R. 618); *Haselinton* v. *Gill* (*ibid.* 620 n.); *Gardner* v. *Rowe* (5 Russ. 258); *Tugman* v. *Hopkins* (4 M. & G. 389); *Duncan* v. *Cashin* (L. R. 10 C. P. 554). This section does not invalidate any gift which was valid before the Act.

(3) Investments in fraud of creditors.

(*d*) This is a re-enactment of section 6 of the Act of 1870. The intention of a fraudulent settlor must be inferred from the necessary consequences of his act, and not by speculating as to what was passing in his mind, *Freeman* v. *Pope* (L. R. 5 Ch. 538). If the necessary consequence of the investment is to defraud the creditors, the investment will be fraudulent. Marriage may be part of the scheme to defraud, and in that case is not valuable consideration: compare *Colombine* v. *Penhall* (1 Sm. & Giffard, 228); *Bulmer* v. *Hunter* (L. R. 8 Eq. 46), with *Kevan* v. *Crawford* (6 C. D. 29). But the onus lies on the creditors to prove the marriage part of the fraud, *Holmes* v. *Penney* (3 K. & J. 90); and a subsequent creditor can set aside the fraudulent transaction, *Freeman* v. *Pope* (5 Ch. 538); *Mackay* v. *Douglas* (L. R. 14 Eq. 106); *Townshend* v. *Westacott* (2 Bea. 340). If the husband invest money in his wife's name, intending thereby

to settle it to her separate use, the gift will be good against him, and he cannot be heard to say that the investment was fraudulent: see cases collected, in May, Voluntary Conveyances, ed. of 1871, p. 425. **§ 10.**

A post-nuptial settlement by a trader is void under the 91st section of the Bankruptcy Act, 1869, if made within two years of his bankruptcy, and voidable if within ten years. And it is presumed that gifts to the wife and investments in her name under this Act would be included in that section.

§ 11.

Moneys payable under policy of assurance not to form part of estate of the insured.

11. A married woman may by virtue of the power of making contracts hereinbefore contained effect a policy upon her own life or the life of her husband for her separate use; and the same and all benefit thereof shall enure accordingly (*a*).

A policy of assurance effected by any man on his own life, and expressed to be for the benefit of his wife, or of his children, or of his wife and children, or any of them, or by any woman on her own life, and expressed to be for the benefit of her husband, or of her children, or of her husband and children, or any of them (*b*), shall create a trust in favour of the objects therein named, and the moneys payable under any such policy shall not, so long as any object of the trust remains unperformed form part of the estate of the insured, or be subject to his or her debts: Provided, that if it shall be proved that the policy was effected and the premiums paid with intent to defraud the creditors of the insured, they shall be entitled to receive, out of the moneys

§ 11. payable under the policy, a sum equal to the premiums so paid. The insured may by the policy, or by any memorandum under his or her hand, appoint a trustee or trustees of the moneys payable under the policy, and from time to time appoint a new trustee or new trustees thereof, and may make provision for the appointment of a new trustee or new trustees thereof, and for the investment of the moneys payable under any such policy. In default of any such appointment of a trustee, such policy, immediately on its being effected, shall vest in the insured and his or her legal personal representatives, in trust for the purposes aforesaid. If, at the time of the death of the insured, or at any time afterwards, there shall be no trustee, or it shall be expedient to appoint a new trustee or new trustees, a trustee or trustees or a new trustee or new trustees may be appointed by any court having jurisdiction under the provisions of the Trustee Act, 1850, or the Acts amending and extending the same (*c*). The receipt of a trustee or trustees duly appointed, or, in default of any such appointment, or in default of notice to the insurance office, the receipt of the legal personal representative of the insured shall be a discharge to the office for the sum secured by the policy, or for the value thereof in whole or in part (*d*).

13 & 14 Vict., c. 60.

Married woman's

(*a*) This is a re-enactment with some additions, see notes (*b*) and (*c*) below, of section 10 of the Act of 1870,

§ 11.

see Appendix, p. 147. In order that the moneys payable under the policy should enure to the separate use of the married woman, it was necessary under the Act of 1870 that the policy should be expressed on the face of it to be effected for her separate use, and it may still be advisable that it should be so expressed; though this is apparently no longer necessary. A policy would be an interest in a public body within sections 6 and 7. It is important to remember that if the policy of a married woman on her own life is not settled either on the face of it or otherwise, and remains undisposed of at her death, her husband becomes entitled to the proceeds on her death. See Introduction, p. 39. A married woman could, before the Act of 1870, effect a policy on her own life and on the life of her husband out of her separate property, *Read* v. *Royal Exchange, &c.* (Peake's Add. Ca. 70), and it is presumed on any other life in which she had an insurable interest; and this section will not, it is submitted, cut down the general power of contracting given her by section 1 (2), so as to prevent her making insurances on other lives.

policy of insurance.

(*b*) The power given to a man by the Act of 1870, of insuring his life for the benefit of his wife and children independently of his own liabilities, is by this section extended to the wife in respect of her husband and children. It was held under the same proviso as to creditors in the Act of 1870, that the proviso had so far modified the 91st section of the Bankruptcy Act, 1869, as to give the creditors no interest in the policy beyond the amount of the premiums paid, *Holt* v. *Everall* (2 C. D. 266). And it appears from that case that a settlement of a policy under this section is subject to the same conditions as any other settlement under the 91st section, so that such a settlement will be void within two years, and voidable within ten, if made by a trader. It was also held in the same case that, where a policy had been

The statutory settled policy of husband or wife.

§ 11. settled under section 10 of the Act of 1870 by the husband on his wife and children, but the premiums were actually paid out of the separate property of the wife, the moneys payable on the policy were not subject to the husband's liabilities. There is no decision under the Act of 1870 as to what would be the husband's rights against a wife fraudulently effecting a policy with his moneys; but it is presumed on the analogy of the creditors in *Holt* v. *Everall* (2 C. D. 266) that he would be entitled to the value of the premiums so paid. Where the trust expressed on the face of the policy was simply one for the benefit of the wife and children, and they were left in poor circumstances, the Court had a discretion to treat the fund as if it was the proceeds if an intestate's estate and divided it accordingly, *In re Mellor's Trusts* (7 C. D. 200), reversing (6 C. D. 127).

Appointment of trustee.

(*c*) The Act of 1870 only provided for an appointment of a trustee by the Court, but now the insured may appoint trustees, either by the policy itself, or by a memorandum under his hand, and if there is no trustee appointed the policy vests in the insured and his legal personal representatives. For the practice under Trustee Act, 1850, section 32, see Morgan, 98; Dan. Ch. Practice, 5th ed., p. 1818. The application under the Trustee Act is in practice by petition, though it may be by summons; and it was by petition under the Act of 1870: see *Mellor's Trusts* (6 C. D. 127). The Court will not enter into the conduct of trustees or remove trustees without their consent, nor will it appoint trustees where they could be appointed by the parties. It is submitted that new trustees of a policy might be appointed under the Conveyancing and Law of Property Act, 1881, section 31. Under that Act the application must be by summons at chambers, *Re Lillwall* (W. N. ('82), 6).

The dis-

(*d*) The receipt of the legal personal representative of

§ 11. Discharge to the office.

the deceased is to be sufficient discharge to the office, if they have no notice of there being any trustees. It is presumed that notice by the trustees any time before the payment, would be sufficient to prevent the office paying the money to the legal personal representative. The office cannot pay the moneys due on an ordinary policy into court, under the Trustee Relief Act, *Haycock's Policy* (1 C. D, 611); *Matthew* v. *Northern, &c., Co.* (9 C. D. 80); but in the case of a policy impressed with a trust under this section, and where there was no trustee, and the legal personal representative is not appointed, it is submitted, they could.

§ 12. Remedies of married woman for protection and security of separate property.

12. Every woman, whether married before or after this Act, shall have in her own name against all persons whomsoever, including her husband, the same civil remedies, and also (subject, as regards her husband, to the proviso hereinafter contained) the same remedies and redress by way of criminal proceedings, for the protection and security of her own separate property, as if such property belonged to her as a feme sole (*a*); but, except as aforesaid, no husband or wife shall be entitled to sue the other for a tort (*b*). In any indictment or other proceeding under this section it shall be sufficient to allege such property to be her property; and in any proceeding under this section a husband or wife shall be competent to give evidence against *each* other, any statute (*sic.*) or rule of law to the contrary notwithstanding (*c*): Provided always, that no criminal proceeding shall

§ 12. be taken by any wife against her husband by virtue of this Act while they are living together, as to or concerning any property claimed by her, nor while they are living apart, as to or concerning any act done by the husband while they were living together, concerning property claimed by the wife, unless such property shall have been wrongfully taken by the husband when leaving or deserting, or about to leave or desert, his wife (*d*).

Married woman suing under Act of 1870, sec. 11.

(*a*) The 11th section of the Act of 1870, see Appendix, p. 148, gave the married woman in her own name the same remedies, both civil and criminal, against all persons whomsoever for the protection and security of property secured to her by that Act, as if such property belonged to her as an unmarried woman. And a married woman within that section can still sue under it in respect of any right which shall have accrued to her before the Act of 1882 came into force : Act of 1882, section 22, p. 135. But the present section gives all married women the right to sue for everything that is their separate property, whether under the Act of 1882 or not, and therefore there will be no right under section 11 of the Act of 1870, which is not available under the present section, unless it should be held that the husband can be proceeded against criminally under section 11 of the Act of 1870. There has been no decision on that point at present, but it is submitted he could not. In *Summers* v. *City Bank* (L. R. 7 C. P. 580), it was held that a married woman trading separately could, under the 11th section of the Act of 1870, sue her bankers for breach of contract, as a remedy for the protection of her separate property ; and Brett, L. J., was of opinion that an action

for libel would be such a remedy: and see *Moore* v. *Robinson* (27 W. R. 312); and *Ramsden* v. *Brearley* (L. R. 10 Q. B. 147), the latter decided under 20 & 21 Vict. c. 85, section 26. A married woman could not bring an action for a nuisance, because it was a personal injury and not an injury to property, *White* v. *Cohen* (1 Drew. 312). § 12.

But by section 1, sub-section (2), of the Act of 1882, a married woman is now capable of suing and being sued, either in contract or tort or otherwise, in all respects as if she were a *feme sole*, and the words of this section are, if possible, wider. As to points of practice, see note (*c*) to section 1, sub-section (2), above, p. 51; and as to the old law of torts, p. 58. The wife has no remedy given her by this section except for the protection and security of her own separate property, but she can sue any one except her husband for personal torts under section 1, sub-section (2); see note (*c*), p. 57. And under the Act of 1882.

(*b*) The wife is prohibited by this section from suing her husband in tort, except as aforesaid; that is to say, except where the separate property of the wife is concerned; and it is submitted that this section limits the scope of section 1, sub-section (2), so that the wife will not be able to sue her husband for a personal tort under that sub-section, above, p. 48. Husband and wife suing in tort.

(*c*) At common law husband and wife were not capable of giving evidence for or against each other at all, but by the 14 & 15 Vict. c. 99, as amended by the 16 & 17 Vict. c. 83, husbands and wives were rendered capable of giving evidence for or against each other in civil matters; and it was expressly provided that nothing in that Act should render any husband competent, or compellable to give evidence for or against his wife, or any wife competent or compellable to give evidence for or against her husband in any criminal proceeding. The Evidence of husband and wife for and against each other.

§ 12. present section is not very happily worded, "each other," line 15, ought to be read "the other," and nothing is said as to a husband or wife giving evidence *for* the other; but the wife of a prosecutor could always give evidence either for the Crown or for the defendant, *R.* v. *Houlton* (Jebb, C. C. 24); and so by analogy it is submitted that the husband will be able to give evidence for his wife when she is prosecuting under this section. The old rule as to evidence is only modified where the wife takes proceedings under this section for the protection of her separate property. It may be a question whether this section affects the law as to privileged communications between husband and wife. Before the Act communications between husband and wife could not be divulged, 16 & 17 Vict. c. 83, s. 3; Taylor on Evidence, 764. It is clear that if these communications are still privileged it will limit the operation of the section to a great extent.

Privileged communications between husband and wife.

(*d*) For a statement of the common law on criminal proceedings by husband and wife, see judgment of Lush, J., in *Phillips* v. *Barnet* (1 Q. B. D. 436).

§ 13. 13. A woman after her marriage shall continue to be liable in respect and to the extent of her separate property for all debts contracted, and all contracts entered into or wrongs committed by her before her marriage, including any sums for which she may be liable as a contributory, either before or after she has been placed on the list of contributories, under and by virtue of the Acts relating to joint-stock companies (*a*); and she may be sued for any such debt and for any liability in damages or otherwise under any such contract, or in respect of any such

Wife's ante-nuptial debts and liabilities.

wrong; and all sums recovered against her in respect thereof, or for any costs relating thereto, shall be payable out of her separate property (*b*); and, as between her and her husband, unless there be any contract between them to the contrary, her separate property shall be deemed to be primarily liable for all such debts, contracts, or wrongs, and for all damages or costs recovered in respect thereof (*c*): Provided always, that nothing in this Act shall operate to increase or diminish the liability of any woman married before the commencement of this Act for any such debt, contract, or wrong, as aforesaid, except as to any separate property to which she may become entitled by virtue of this Act, and to which she would not have been entitled for her separate use under the Acts hereby repealed or otherwise, if this Act had not passed (*d*). § 13.

Liability of wife under sec. 12 of the Act of 1870, and under the Act of 1874.

(*a*) By the Act of 1870, section 12, see Appendix, p. 148, the wife married after that Act was made liable to be sued for, and any property belonging to her for her separate use was made liable to satisfy, her debts contracted before marriage, as if she had continued unmarried; and the husband became no longer liable for them. Before the Act of 1870, the husband only was liable during coverture for the ante-nuptial contracts and torts of his wife, *Wainford* v. *Heyl* (L. R. 20 Eq. 321). But even before the Act of 1870 came into force, it was held in equity on the authority of *Biscoe* v. *Kenedy* (1 Bro. C. C. 17 n.), that, though the husband and wife were discharged at law by the bankruptcy of

§ 13. the husband, the separate property of the wife settled on herself before marriage was still liable for her ante-nuptial debts, *Chubb* v. *Stretch* (L. R. 9 Eq. 555). But this case can hardly be reconciled with the decision in *Pike* v. *Fitzgibbon* (17 C. D. 454), where it was held that the contract of a married woman could not bind her after-acquired separate estate; see also *Smith* v. *Lucas*, (18 C. D. 531), and Introduction, p. 32. But the question is hardly likely to be raised again now, though as the Statutes of Limitation have been held not to apply to separate property, *Hodgson* v. *Williamson* (15 C. D. 87), it might be. The Act of 1870, applies not only to separate property created by that Act, but to separate property created by settlement, and a restraint on anticipation is no bar to a judgment under section 12 for ante-nuptial debts, *Sanger* v. *Sanger* (L. R. 11 Eq. 470), whether the property sought to be reached is settled by the married woman herself or not. The husband's liability for his wife's ante-nuptial debts was abolished by the Act of 1870, section 12, Appendix, p. 148; and it was held unnecessary to join the husband where it is sought to charge the separate property of the wife only, under that Act, *Williams* v. *Mercier* (9 Q. B. D. 337, 339); but by the Act of 1874, section 2, Appendix, p. 151, it was revived to the extent of property derived from the wife; and his liability for any tort or breach of contract committed by his wife before marriage, which was left untouched by the Act of 1870, was limited in the same way, see notes to section 14 below, p. 105. But the liability of the wife under the Act of 1870 was not extended by the Act of 1874, except that she was rendered liable for the costs paid to her husband where he has successfully defended himself under the Act of 1874; *London and Prov. Bank* v. *Bogle* (7 C. D. 773), see section 3, Appendix, p. 151, and note (*b*) to section

15, p. 113. The difference of the language between section 12 of the Act of 1870, and section 2 of the Act of 1874, may be calculated to raise some doubt, which is rather increased by the language of the Act of 1882, whether it was intended by the Act of 1870 to render the wife liable for breaches of contract before marriage, or merely for her debts in the narrower sense. It was decided in Ireland, that "debts" in section 12 included breaches of contract, *Conlon* v. *Moore* (9 Ir. Rep. C. L. 190). But that was before the Act of 1882 was passed, and the language of this 13th section and of section 14 makes a clear distinction between debts contracted, contracts entered into, and wrongs committed by the wife before marriage. As to suing husband and wife jointly, see note (*c*), section 15, below, p. 113. **§ 13.**

Liability of wife under Act of 1882.

A woman married after the commencement of the Act of 1882, is under this 13th section of the Act to continue liable to the extent of her separate property, for all debts contracted, and all contracts entered into, or wrongs committed by her before her marriage, and may be sued accordingly. A wife surviving her husband was at common law liable for her contracts and torts previous to marriage and remains so still, *Vine* v. *Saunders* (4 Bing. N. C. 96). The Statute of Limitations does not apply to separate property, *Hodgson* v. *Williamson* (15 C. D. 87), and see Introduction, p. 31, and note (*c*), section 1 (2), p. 58, but it may be doubted whether time will not run against ante-nuptial creditors, who are not strictly creditors of the separate property. It was not expressly decided under the Act of 1870, but it is submitted that there can be no question that under both Acts, all the separate property which the married woman possesses at the time of judgment recovered is liable; see *Sanger* v. *Sanger* (L. R. 11 Eq. 470). The words of the Act of 1870, section 12, Appendix, p. 148, are "any property

§ 13. belonging to her for her separate use," and by this Act she is liable "to the extent of her separate property." Neither the doctrine laid down in *Pike* v. *Fitzgibbon* (17 C. D. 454), nor section 1, sub-section (4) of this Act, p. 63, apply to the case of ante-nuptial contracts, for they are not such as were entered into with respect to or to bind her separate property. So that all after-acquired property which is settled to her separate use, or has become assets in the hands of her husband under section 5 of the Act of 1874, and section 14 of this Act, will be liable both for her ante-nuptial contracts and torts, see section 1, sub-section (4), of this Act, p. 63. A married woman could not before the Act bind her future-acquired separate estate by her contract; yet her covenant before marriage bound her future-acquired property, though given to her separate use, *Smith* v. *Lucas* (18 C. D. at p. 543). But a married woman cannot be restrained from disposing of her separate estate until judgment, *Nat. Pro. Bank* v. *Thomas* (24 W. R. 1013). A restraint on anticipation whether the settlement was made by the married woman or by a stranger, was held not to take away her liability under section 12 of the Act of 1870, for ante-nuptial debts, *Sanger* v. *Sanger* (L. R. 11 Eq. 470); *London and Prov. Bank* v. *Bogle* (7 C. D. 773), and it is submitted will not do so under the Act of 1882; although by section 19, p. 125, no restriction against anticipation contained in any settlement or agreement for a settlement of a woman's own property to be made and entered into by herself, is to have any validity against debts contracted by her before marriage. The wording of that section might appear to render the restraint effectual against ante-nuptial contracts or torts. Compare the language of section 19 with that of this section, see note (*b*) to section 19, p. 127.

§ 13.

(*b*) Compare section 1 (2), note (*c*), p. 51.

(*c*) As between husband and wife, the wife's separate property is primarily liable for her ante-nuptial contracts and torts. But the wife may contract herself out of this provision, and such contract, in order to be binding, must, it is presumed, be for valuable consideration. If it should be held that the ante-nuptial liabilities of the wife are not barred by the Statute of Limitations, as being debts against her separate property, the wife's separate property will, in cases where the liability of the husband is barred by the statute, remain, not only primarily, but solely liable, see note (*a*) above, and Introduction, p. 31.

As to women married before the Act.

(*d*) Nothing in this section is to increase or diminish the liability of any woman married before the Act. But in respect of separate property, which could not have been acquired by her but for this Act, a woman married before the Act is in the same position as a woman married since. Such property will be property coming to a woman under section 5 of this Act, which would not have come to a woman under the Act of 1870, either because she was married before that Act, or because the property was not within sections 7 and 8 of that Act, see note (*a*) to section 5, above, p. 73.

Married women are, in respect of their ante-nuptial liabilities, now divided into four classes, see note (*a*) above:

Married women divided into four classes.

(1) Women married before 9th August, 1870, who are not subject to ante-nuptial liabilities, unless, perhaps, when the husband is unable to pay, *Chubb* v. *Stretch* (L. R. 9 Eq. 555).

(2) Women married between 9th August, 1870, and 31st December, 1882, both inclusive, who are liable for their ante-nuptial debts, and, possibly, their breaches of contract, *Conlon* v. *Moore* (9 Ir. Rep. C. L. 190).

§ 13. (3) Women married on, or after, 1st January, 1883, who are liable for their ante-nuptial debts, contracts, and torts, and as between themselves and their husbands, primarily liable; under this section

(4) Women having property coming to them under the Act of 1882, which, but for the Act, would not have come to them, are liable on such property as if they were included in number (3).

As to when an Act comes into operation, see *Tomlinson* v. *Bullock* (4 Q. B. D. 230), and note (*f*) to section 14, p. 111.

A married woman, within section 12 of the Act of 1870, can still be sued under that section, see section 22, p. 135, for liabilities accruing before the commencement of the Act of 1882.

§ 14. 14. A husband shall be liable for the debts of his wife contracted, and for all contracts entered into and wrongs committed by her, before marriage (*a*), including any liabilities to which she may be so subject under the Acts relating to joint-stock companies as aforesaid (*b*), to the extent of all property whatsoever belonging to his wife which he shall have acquired or become entitled to from or through his wife (*c*), after deducting therefrom any payments made by him, and any sums for which judgment may have been bonâ fide recovered against him in any proceeding at law, in respect of any such debts, contracts, or wrongs for or in respect of which his wife was liable before her marriage as aforesaid (*d*); but he shall not be liable for the same any further or

Husband to be liable for his wife's debts contracted before marriage to a certain extent.

otherwise; and any court in which a husband shall be sued for any such debt shall have power to direct any inquiry or proceedings which it may think proper for the purpose of ascertaining the nature, amount, or value of such property (*e*): Provided always, that nothing in this Act contained shall operate to increase or diminish the liability of any husband married before the commencement of this Act for or in respect of any such debt or other liability of his wife as aforesaid (*f*). § 14.

(*a*) At common law, the husband was alone liable, to the exoneration of the wife and of her separate property, for her contracts and torts entered into, or committed before marriage, and husbands married before the 9th August, 1870, are still in that position. A husband is not, by reason of any marriage which took place between the 9th of August, 1870, and the 29th of July, 1874, both inclusive, liable for the debts of his wife contracted before marriage, but he is still left liable for her torts, and possibly her contracts: Act of 1870, section 12, repealed as to husband, by Act of 1874, section 1, Appendix, pp. 148, 150. As to the wife's ante-nuptial breaches of contract, it was decided in Ireland, *Conlon* v. *Moore* (9 Ir. Rep. C. L. 190), that the word "debts," in section 12 of the Act of 1870, included contracts, and was not cut down by the words of section 2 of the Act of 1874, which were added *ex abundanti cautela*. A marriage taking place between the passing of the Acts of 1870 and 1874, may have been part of a scheme to defraud the creditors of the wife, for if she married without a settlement, her property would go to

Husband's liability at common law for wife's ante-nuptial debts.

Under Act of 1870.

§ 14. her husband, and he would not under that Act be liable for her debts. In such a case her property would be liable to creditors in analogy to the cases of husbands marrying to defeat their creditors, see note (*d*) to section 10, p. 90.

Husband's liability for his wife's ante-nuptial debts under Act of 1874,

The Act of 1874, section 1, see Appendix, p. 150, by repealing the part of section 12 of the Act of 1870 which applied to the husband, leaves the husband married on or after 30th July, 1874, in precisely the same position as the husband before the Act of 1870, *Matthews* v. *Whittle* (13 C. D. 811). But section 2 limits his liability for his wife's debts, contracts, and torts, to the extent of the assets specified in section 5 of the Act of 1874. See below, note (*b*), p. 107. The Act of 1882 does not increase or diminish his liability, see proviso at the end of this 14th section.

and under the Act of 1882.

Under the Act of 1882, the husband married after the commencement of the Act is also liable, to a limited extent, for the debts of his wife contracted, and for all contracts entered into, and wrongs committed, by her before marriage, including any liabilities to which she may be so subject under the Acts relating to joint-stock companies, see below, note (*c*), p. 107. The word "contract" in the Act of 1882, includes the acceptance of any trust, see note to section 24, p. 137.

Husband not liable on discoverture.

Before the Act of 1870, a husband was not liable after discoverture for the ante-nuptial contracts or torts of his wife, *Heard* v. *Stamford* (3 P. Wms. 409). It was held in *Matthews* v. *Whittle* (13 C. D. 811), that by the partial repeal of section 12 of that Act, the husband was, subject to pleading the Act of 1874 in his defence, in the same position as the husband before the Act of 1870, and therefore it is conceived that husbands within the Act of 1874 will not be liable even to the limited extent after discoverture; but the words of the Act of 1882 are

§ 14.

quite general, and may be held to apply after discoverture. A husband is not liable after dissolution of the marriage under 20 & 21 Vict. c. 85, nor after judicial separation or a protection order has been granted under that Act. But he is liable though they are living apart, *Head* v. *Briscoe* (5 C. & P. 484), and the 20 & 21 Vict. c. 58, s. 26; Appendix, p. 153, may be held only to apply to contracts and torts made or committed after the separation or order. As to torts generally, see note to section 1 (2), p. 58.

(*b*) The Act of 1874, see Appendix, p. 150, was held not to interfere with the operation of sections 75 and 78 of the Companies Act, 1862, by which a person marrying any female contributory is made personally liable to contribute on her shares. In this case the husband's liability is not limited to the extent of the assets included in section 5 only; for the husband is not made liable by those sections for the debt of the wife, but the husband himself is made the debtor as from the date of the marriage, *Ex parte Hatcher* (12 C. D. 284). But the Companies Acts were not referred to in that Act. This section limits the husband's liability in respect of any sums for which his wife may be liable as a contributory under the Companies Acts, as well as in respect of other contracts. At the same time it may be said that the liabilities under section 78 were liabilities of the husband, and had ceased on marriage to be liabilities of the wife under the above-named sections of the Companies Act. The question is, whether the words "may be liable" mean liable at the time of marriage, or at the time of winding-up the company. But as the Act takes away the husband's interest in such shares, it would be unreasonable to say that it was intended to make him liable for them beyond the limit imposed by the section.

§ 14.

The limit of the husband's liability, under the Act of 1874,

(*c*) The extent of the liability of the husband for his wife's ante-nuptial debts, contracts and torts is limited both by this section, and by the Act of 1874, but it is not the same under the two Acts.

By the Act of 1874, section 5, Appendix, p. 151, it is limited to:

(1) The value of the personal estate in possession of the wife which shall have vested in the husband:

(2) The value of the choses in action of the wife which the husband shall have reduced into possession, or which with reasonable diligence he might have reduced into possession:

(3) The value of the chattels real of the wife which shall have vested in the husband and wife:

(4) The value of the rents and profits of the real estate of the wife which the husband shall have received, or with reasonable diligence might have received:

(5) The value of the husband's estate or interest in any property real or personal, which the wife in contemplation of her marriage with him shall have transferred to him, or to any other person:

(6) The value of any property, real or personal, which the wife, in contemplation of her marriage with the husband shall with his consent have transferred to any person with a view of defeating or delaying her existing creditors.

and under the Act of 1882 compared.

By the Act of 1882, the husband is liable to the extent of all property whatsoever belonging to his wife, which he shall have acquired or become entitled to, from or through his wife, and not further or otherwise. A husband married after the Act of 1882 will not acquire anything from his wife by marital right, see section 2, p. 68; so that in future the property which would have come within the Act of 1874, section 5, sub-sections (1), (2), (3), (4), will remain the property of the wife on

marriage, and be liable under section 13 to her ante-nuptial debts. In respect of property settled by the wife upon or after marriage, the liability of the husband married since the Act of 1882 will be different from that of the husband within the Act of 1874. Under the Act of 1874, section 5, sub-section (6), the husband is liable for the value of all the property settled by the wife on marriage in fraud of creditors with his consent, whether such property is settled on herself, or on him, or on any other person, such as children of the wife by a former marriage. The interest of any volunteers under such settlement would be assets for the creditor, *Clarke* v. *Wright* (6 H. & N. 849), and so would the interest of the wife outside the Act of 1870 on the bankruptcy of the husband, *Chubb* v. *Stretch* (L. R. 9 Eq. 555). But the husband would be primarily liable for the ante-nuptial liabilities of the wife before the Act of 1870 ; and if within the Act of 1874 would have no right to be indemnified by the wife under that Act. But under the Act of 1882 the husband is only liable for property settled on him ; and as between husband and wife, only after the wife's property is exhausted, see section 13, note (*c*), p. 103. § 14.

It might perhaps be held, in case the husband had no notice of the wife's liabilities, that he was not liable under the Act of 1874, as if he were no party to the fraud his consent would not have been given in so far as the settlement was fraudulent ; but there is at present no decision on the point. Under both Acts the husband will be liable for the value of his estate and interest in any property settled by the wife in contemplation of marriage, but under the Act of 1882, he will also be liable for his estate and interest in any property settled on him by the wife after marriage, but not if the property came to him for valuable consideration,

§ 14. although this would be within the strict words of the section.

Foreign law.

In *De Greuchy* v. *Wills* (4 C. P. D. 362), decided under the Act of 1874, it was held that a husband married in England to a wife who had contracted ante-nuptial debts in Jersey, was only liable to the extent specified in the Act, although by the law of Jersey the husband was liable for the whole; and, *semble*, it would have been otherwise if they had been married in Jersey.

Pleading.

Under the Act of 1874, the plaintiff need not allege that the husband has received any assets, for the husband was, by the repeal of section 12 of the Act of 1870, made primarily liable for his wife's ante-nuptial debts, as he was before, and if he does not plead the Act in his defence, is to be deemed to have confessed his liability, as far as assets are concerned, *Matthews* v. *Whittle* (13 C. D. 811). But it is otherwise under the present Act, which, it is submitted, throws the onus of proof upon the creditor, for the husband is made liable to a limited extent.

The husband may deduct former payments under both Acts.

(*d*) The husband may deduct from the value of the property liable under the Act of 1874, or this section, any payments which he has made, and any sums for which judgment may have been *bonâ fide* recovered against him in any proceeding at law, in respect of the ante-nuptial liabilities of his wife. The interpretation of both Acts will probably be the same, but the language of the present section is clearer than that of the 5th section of the Act of 1874, Appendix, p. 151. The words "subsequent action" in that section gave rise to an ambiguity. In *Fear* v. *Castle* (8 Q. B. D. 380) it was decided that subsequent action meant "action commenced subsequently to the commencement of the action in which judgment has been recovered," and not "action commenced subsequently to the recovery of judgment."

§ 14.

It is not quite apparent whether or not under the proviso in the 5th section of the Act of 1874, a husband may deduct the payment of a debt incurred by the wife after marriage, in respect of her separate property, and paid by him; compare the language of the present section. It will be observed that the judgment need not have been satisfied by the husband, but only *bonâ fide* recovered against him. If it had been otherwise, the husband could not deduct the value of a judgment which has been recovered but not actually satisfied. The words "*bonâ fide*" protect the creditor from any collusive judgment. In case the assets of the wife in the hands of the husband are not sufficient to satisfy her debts, the husband will be able to prefer one creditor to another.

(*e*) This convenient provision is new.

Liability of husbands married at different times.

(*f*) The liability of husbands married before the Act of 1882 remains the same as before, and they are under the same liability to be sued under the Act of 1874: see note to section 22, p. 135. Husbands, as to their liability for the ante-nuptial debts, contracts, and torts of their wives, may be divided into three classes (see note (*a*) above).

(1) Husbands married before 9th August, 1870, are liable for their wives' ante-nuptial debts, contracts, and torts, as long as the marriage continues, to the full extent of their own property, and any property they may have got through the wife.

(2) Husbands married between 9th August, 1870, and 29th July, 1874, both inclusive, are liable for their wives' ante-nuptial torts, and possibly their breaches of contract, *Conlon* v. *Moore* (9 Ir. Rep. C. L. 190), but are not liable for their debts at all.

(3) Husbands married on or after 30th July, 1874, are liable to the extent of all property coming to them through their wives.

§ 14. (α) Under the Act of 1874, section 5, if married between 30th July, 1874, and 31st December, 1882, both inclusive.

(β) Under the Act of 1882, if married on or after 1st January, 1883.

As to the difference of liability under these two Acts, see above, note (c), p. 108.

An Act comes into force from the earliest moment of the day of its passing, or of the day named for its commencement, *Tomlinson* v. *Bullock* (4 Q. B. D. 230).

§ 15. Suits for ante-nuptial liabilities.

15. A husband and wife may be jointly sued in respect of any such debt or other liability (whether by contract or for any wrong) contracted or incurred by the wife before marriage as aforesaid, if the plaintiff in the action shall seek to establish his claim, either wholly or in part, against both of them (a); and if in any such action, or in any action brought in respect of any such debt or liability against the husband alone, it is not found that the husband is liable in respect of any property of the wife so acquired by him or to which he shall have become so entitled as aforesaid, he shall have judgment for his costs of defence, whatever may be the result of the action against the wife if jointly sued with him (b); and in any such action against husband and wife jointly, if it appears that the husband is liable for the debt or damages recovered, or any part thereof, the judgment to the extent of the amount for which the husband is liable shall be a joint judgment against the

husband personally and against the wife as to her separate property; and as to the residue, if any, of such debt and damages, the judgment shall be a separate judgment against the wife as to her separate property only (*c*). § 15.

(*a*) The section combines and re-enacts sections 3 and 4 of the Act of 1874. The husband and wife are still liable to be sued under that Act on any liability accruing before the commencement of the Act of 1882, see section 22.

(*b*) Where the husband is not found liable. A re-enactment of section 3 of the Act of 1874. The words, "if . . . it is *not found* that the husband is liable," seem to throw the onus upon the creditor, and this is confirmed by the language of section 14, which provides that the husband shall be liable to the limited extent defined in that section, and not further, or otherwise. It was otherwise under section 3 of the Act of 1874, *Mathews* v. *Whittle* (13 C. D. 811). Husband not found liable.

The costs paid to the husband under the Act of 1874, section 3, were allowed to be added to the debt of the wife, and were recovered against her estate, *London & Pro. Bank* v. *Bogle* (7 C. D. 773); though she was restrained from anticipation. These sections appear to over-ride R. S. C. Order LV, and under them the Court would have no discretion as to the husband's costs; cf. *Garnett* v. *Bradley* (3 App. Ca. 944).

(*c*) Where the husband is found liable. A re-enactment of section 4 of the Act of 1874. Under the old law, if the husband and wife were taken in execution for the wife's ante-nuptial debt, the Court would discharge the wife, if it were proved that she had no separate property, *Ivens* v. *Butler* (26 L. J., Q. B. 145); *Jay* v. Husband found liable.

§ 15. *Amplett* (32 L. J. Ex. 176); but not if the judgment was against the wife alone, *Beynon* v. *Jones* (15 M. & W. 566); *Poole* v. *Canning* (L. R. 2 C. P. 241). Married women are within the Debtors Act, 1869, section 5, and may be committed under it if they have means to pay, *Dillon* v. *Cunningham* (L. R. 8 Ex. 23), *sed quære.* Joint judgment was gone at law but not in Equity against the wife where the husband had obtained his discharge as a bankrupt, *Chubb* v. *Stretch* (L. R. 9 Eq. 555). Under Order IX. r. 3, where husband and wife are both defendants to the action, service on the husband is service on the wife (see note (*c*) to section 1, subsection 2, p. 55), and also in what cases the wife can defend alone under Order XVI. r. 8 (see p. 54), and as to joining claims against husband and wife, see Order XVII. rules 4 and 7.

§ 16. Act of wife liable to criminal proceedings.

16. A wife doing any act with respect to any property of her husband, which, if done by the husband with respect to property of the wife, would make the husband liable to criminal proceedings by the wife under this Act, shall in like manner be liable to criminal proceedings by her husband.

Compare the proviso at the end of section 12, p. 95. By the incorporation of that proviso with this section no criminal proceedings can be taken by any husband against his wife by virtue of this Act while they are living together, as to or concerning any property claimed by him, nor while they are living apart, as to or concerning any act done by the wife while they were living together,

concerning property claimed by the husband, unless such property shall have been wrongfully taken by the wife when leaving or deserting, or about to leave or desert her husband. § 16.

17. In any question between husband and wife as to the title to or possession of property, either party, or any such bank, corporation, company, public body, or society as aforesaid in whose books any stocks, funds, or shares of either party are standing, may apply by summons or otherwise in a summary way to any judge of the High Court of Justice in England or in Ireland, according as such property is in England or Ireland, or (at the option of the applicant irrespectively of the value of the property in dispute), in England to the judge of the county court of the district, or in Ireland to the chairman of the civil bill court of the division in which either party resides (*a*), and the judge of the High Court of Justice or of the county court, or the chairman of the civil bill court (as the case may be), may make such order with respect to the property in dispute, and as to the costs of and consequent on the application as he thinks fit, or may direct such application to stand over from time to time, and any inquiry touching the matters in question to be made in such manner as he shall think fit: Provided always, that any order of a judge of the High Court of Justice to be made under the provisions of this section shall § 17. Questions between husband and wife as to property to be decided in a summary way. (*sic.*)

§ 17. be subject to appeal in the same way as an order made by the same judge in a suit pending, *or on an equitable plaint*, in the said court would be (*b*), and any order of a county or civil bill court under the provisions of this section shall be subject to appeal in the same way as any other order made by the same court would be, and all proceedings in a county court or civil bill court under this section in which, by reason of the value of the property in dispute (*c*), such court would not have had jurisdiction if this Act or the Married Women's Property Act, 1870, had not passed, may, at the option of the defendant or respondent to such proceedings, be removed as of right into the High Court of Justice in England or Ireland (as the case may be), by writ of certiorari or otherwise as may be prescribed by any rule of such High Court; but any order made or act done in the course of such proceedings prior to such removal shall be valid, unless order shall be made to the contrary by such High Court: Provided also, that the judge of the High Court of Justice or of the county court, or the chairman of the civil bill court, if either party so require, may hear any such application in his private room: Provided also, that any such bank, corporation, company, public body, or society as aforesaid, shall, in the matter of any such application for the purposes of costs or otherwise, be treated as a stakeholder only (*d*).

§ 17.

Application of Act of 1870, sec. 9.

(*a*) This section is an extension of section 9 of the Act of 1870. That section only applied to separate property of the wife given her by the Act of 1870. A husband or wife, married before the Act of 1882, may, by section 22 of the Act of 1882, still make an application under the 9th section of the Act of 1870 if the right to make such application accrued before the commencement of the Act of 1882, but there seems no advantage in doing so. The provisions of this section are the same as those of the 9th section of the Act of 1870, with the following additions. 1. The present section applies to questions as to the title or possession of any property between husband and wife whenever married. 2. All proceedings in the County Court, in which by reason of the value of the property in dispute such court would not have had jurisdiction if the Acts of 1870 and 1882 had not passed, may, at the option of the defendant to such proceedings, be removed as of right into the High Court by writ of certiorari or otherwise, as may be prescribed by any rule of such High Court, the previous proceedings remaining valid, unless order shall be made to the contrary by the High Court. No such rule has yet been made. 3. The bank, etc., may apply as well as husband or wife, which it could not do under the Act of 1870.

The differences between the Acts.

The legal personal representative of the wife may, it is submitted, apply under this section by the operation of section 23, p. 136.

Questions between husband and wife heard like ordinary actions.

The section is merely enabling, so that questions between husband and wife may be tried in the ordinary way, *Green* v. *Green* (5 Ha. 400, n.); *Wood* v. *Wood* (19 W. R. 1049), but by making his wife defendant the husband admits the property to be her separate property, *Earl* v. *Ferris* (19 Beav. 67); subject to this the ordinary procedure might, in cases of complication, be the most convenient course. But under this section the case can be

§ 17. heard in private on the application of either party, while cases tried in the ordinary way could not be heard in private even with the consent of the parties, *Nagle-Gillman* v. *Christopher* (4 C. D. 173), except in suits for nullity of marriage, *C.* v. *C.* (1 P. & M. 640), and where a public trial would defeat the object of the action, *Andrew* v. *Raeburn* (9 Ch. 522). A wife will now have power to sue her husband in her own name, see note (*c*) to section 1 (2), p. 51, and notes (*a*) and (*b*) to section 12, pp. 96, 97. An injunction will be granted against a husband interfering with his wife's separate property, *Green* v. *Green* (5 Hare, 400 n.); and in *Wood* v. *Wood* (19 W. R. 1049), where she kept a private hotel as her separate business, there was an injunction against him entering the house.

Third parties under this section.

It is a question whether any third parties, as for instance the bank, etc., in the position of stakeholders or trustees, could be brought before the Court under this section. The bank, etc., may apply. It might be inconvenient to decide the question between husband and wife in the absence of the stakeholder. An order could not be made on trustees in their absence, *Collett* v. *Dickenson* (11 C. D. 687); and see *Davies* v. *Jenkins* (6 C. D. 665).

It is presumed that an order would not be made under this section in the absence of the husband or wife, as the case may be, or without proof that they were served.

Questions arising between husband and wife.

The questions between husband and wife which may be expected to arise under the Act only include questions as to the title and possession of property. It may be doubted whether a question arising on contract or tort involving the title or possession of property will be within the section.

(1) Fraud on marital right.

1. Fraud on marital right by investments previous to marriage under the Act of 1870. Under the Act of

1882 there can be no longer any fraud on marital right; for marital right no longer exists, see note (*a*) to section 2, p. 67; but women married before the Act of 1882 could, by investing money to their separate use before marriage, without the consent of their intended husband, bring themselves within the doctrine laid down in *Strathmore* v. *Bowes* (1 W. & T. L. C. in Eq. 446). A woman may not dispose of her property with a view to marriage without the consent of her intended husband. Where a woman settled a fund before marriage, and the husband did not know of its existence till after her death, he was held entitled to it, *Goddard* v. *Snow* (1 Russ. 485); but see Lord Brougham's observations on this case in *St. George* v. *Wake* (1 My. & K. 610). But the husband must prove that he was the intended husband at the time of settlement, *England* v. *Downs* (2 Bea. 528; 6 Bea. 269). The woman may dispose of it for valuable consideration without the intended husband's knowledge, and perhaps for meritorious consideration. *King* v. *Cotton* (2 P. Wms. 674) and *Hunt* v. *Matthews* (1 Vern. 408) are not in point as were once thought, see 1 W. & T. 457. Such a disposition of it is upheld by Lord Eldon in *De Manneville* v. *Crompton* (1 V. & B. 354); but see *St. George* v. *Wake* (1 My. & K. 610); *Downes* v. *Jennings* (32 Beav. 290). Seduction before marriage is a reason for not setting the settlement aside, *Taylor* v. *Pugh* (1 Hare, 608); but see *Downes* v. *Jennings, ubi supra*. The simplest rule would be to hold that where the wife settled the property on herself it was fraudulent, but otherwise if on others. This might be held without overruling any decision except some *obiter dicta* in *St. George* v. *Wake*. But the whole doctrine will soon be obsolete, see note (*a*), section 2, p. 67. A husband, though a minor, is bound by his consent to the wife's settlement, for there can be no fraud on her part if he consented, *Slocombe* v.

§ 17.

§ 17. *Glubb* (2 Bro. C. C. 545), but he is not bound by his own covenant to settle, *Nelson* v. *Stocker* (4 De G. & J. 458); *Kingsman* v. *Kingsman* (6 Q. B. D. 122, C. A.). Two years and a half delay will not bar the husband, *Downes* v. *Jennings* (32 Beav. 290). The representatives of the husband have no rights against the wife for fraud on marital right, *Glazebrook* v. *Percival* (14 Jur. 1103).

(2) Investments in each other's names.

2. Investments after marriage. (*a*) By the wife with the husband's money. Savings of money given by the husband to the wife for household purposes are her husband's and not her separate property, *Barrack* v. *M'Culloch* (3 K. & J. 110, 114). In *Messenger* v. *Clarke* (5 Exch. 388), it was held that, where they were living apart without an agreement under seal, the allowance by the husband to the wife was not her separate property, but the rule is apparently different in equity, *Brooke* v. *Brooke* (25 Bea. 342). The onus of proof, that investments in the wife's name under sections 6 & 7 are not her separate property, lies on the husband. (*b*) By the husband with the wife's money. Where the husband had invested her separate property in the names of third persons, the onus lay on the wife to prove it was her separate property, *Barrack* v. *M'Culloch* (3 K. & J. 110, 114). Where the husband had invested his wife's separate property in his own name without her intending to give it him it remains her separate property, *Darkin* v. *Darkin* (17 Bea. 578); *Hughes* v. *Wells* (9 Hare, 749); *Scales* v. *Baker* (28 Bea. 91); *Knight* v. *Knight* (17 Jur. N. S. 617). The husband may receive the income of the separate property as long as his wife acquiesces, but not longer, *Dixon* v. *Dixon* (9 C. D. 587).

(3) Liability between husband and wife

3. Liability between husband and wife under section 13, see note (*c*), p. 103. The separate property of the wife is primarily liable for her ante-nuptial contracts and torts, so that if the husband is sued for them under

§ 17.

section 14, the wife's separate property will be liable to recoup him, unless there is a contract between them to the contrary. But this will not apply to women married before the Act of 1882, except as to property coming to them exclusively by virtue of the Act. As to torts committed during the marriage by the wife, for which the wife is actionable under section 1 (2), and the husband is still liable by common law, their liability as between themselves is not regulated except by the caprice of the creditor. If the husband is not made a party to such an action the wife cannot make him contribute, and *vice versa*.

under sec. 13.

The wife, if she has disposed of her separate property to her husband, cannot get it back, if the transaction would have been valid between any other parties. As to what is duress by the husband, see *Essex* v. *Atkins* (14 Ves. 542); *Pawlet* v. *Delaval* (2 Ves. Senr. 663). And as to what is evidence of a gift, *Green* v. *Carlill* (4 C. D. 882).

Wife disposing of separate property to husband.

(*b*) The order of a judge of the High Court under this section is to be subject to appeal in the same way as an order by the same judge in a suit pending, or an equitable plaint (*sic*) in the said Court would be. This leaves it ambiguous whether the order would be treated as interlocutory or final for the purposes of appeal. The order is to be subject to appeal as if it were made in a suit pending; and therefore, if it finally decided the question between the parties, it would apparently be a final order and might be appealed against within one year. If it were held to be only an interlocutory order the time for appeal would be only twenty-one days. R. S. C. Order LVIII.

Appeal.

(*c*) As to proceedings in the County Court, see Pitt-Lewis' County Court Practice. It is there stated that "in practice it will be found that the most convenient mode of proceeding" (under this section) "will be by

County Court.

§ 17. plaint and summons," p. 1091; cf. 886; and see order XL. of the County Court Rules, 1875, which is as follows: "Where by any Act not before mentioned (which includes the Married Women's Property Act) in the foregoing rules proceedings are directed to be taken in a County Court such proceedings shall be commenced by plaint or petition; and the foregoing rules shall apply to such proceedings so far as such rules are respectively applicable." As to appeals from the County Courts, see Pitt-Lewis, 541.

Limit of jurisdiction.

The pecuniary limit of the jurisdiction of the County Court irrespective of the Acts of 1870 and 1882, is:

In personal actions £50: 9 & 10 Vict. c. 95, s. 58, as amended by 13 & 14 Vict. c. 61, s. 1.

In actions affecting the title to real property £20 per annum: 9 & 10 Vict. c. 95, s. 58, amended by 30 & 31 Vict. c. 142, s. 12.

Creditors, legatees, devisees, heirs at law, or next of kin, may sue where the property against, or for an account of which they claim does not exceed £500: 28 & 29 Vict. c. 99, s. 1, subs. (1).

In actions relating to mortgages or charges, the mortgage or charge must not exceed £500: 28 & 29 Vict. c. 99, s. 1, subs. (3).

Its jurisdiction may be exercised in all suits for specific performance of, or for the reforming, delivering up, or cancelling of any agreement for the sale, purchase, or lease of any property, where in the case of a sale or purchase the purchase-money, or, in the case of a lease, the value of the property does not exceed £500: 30 & 31 Vict. c. 142, s. 9.

And in suits relating to partnership where the whole partnership property does not exceed £500: 28 & 29 Vict. c. 99, s. 1, subs. (7).

§ 17.

Injunctions may be granted in any matter within the jurisdiction of the County Court for the time being: Judicature Act, sec. 89, *Martin* v. *Bannister* (C. A.), (4 Q. B. D. 491).

Under the Partition Act, 1868, the jurisdiction of the County Court is limited to £500.

Removal to High Court.

In cases where, otherwise than by reason of the value of the property in dispute, the County Court has no jurisdiction independently of the Married Women's Property Acts, the case cannot be removed as of right under this section to the High Court, though it may be removed by application to the High Court outside the Act. This would happen where the title of any toll, fair, market or franchise is in question, for in those cases the jurisdiction of the County Court is specially excluded by 9 & 10 Vict. c. 95, s. 58.

Stakeholder.

(*d*) As to costs, an innocent stakeholder is entitled to his costs, *Duear* v. *McIntosh* (2 Dowling, 730); *Attenborough* v. *London and St. Katharine's Docks Co.* (3 C. P. D. 450; at p. 466); but see *Laing* v. *Zeden* (9 Ch. 736). A mere stakeholder, unless there is a trust, is not entitled to pay the money into Court under the Trustee Relief Act, *Haycock's Policy* (1 C. D. 611); *Matthew* v. *Northern, &c. Co.* (9 C. D. 80); *Re Sutton's Trusts* (12 C. D. 175). But a policy impressed with a trust under this Act might make the office a trustee.

It seems doubtful how far this proviso affects the position of the bank, etc., otherwise than as to costs. Would it, for instance, enable a bailee or agent to make an application under this section in the nature of interpleader against his bailor or principal, where the goods were claimed by the husband or wife under an adverse independent title? see cases in Wilson, Judicature Act, 3rd Ed. 181, and *Biddle* v. *Bond* (6 Best & Smith, 225); *Ex parte Davies* (19 C. D. 86).

§ 18. 18. A married woman who is an executrix or administratrix alone or jointly with any other person or persons of the estate of any deceased person, or a trustee alone or jointly as aforesaid of property subject to any trust, may sue or be sued, and may transfer or join in transferring any such annuity or deposit as aforesaid, or any sum forming part of the public stocks or funds, or of any other stocks or funds transferable as aforesaid, or any share, stock, debenture, debenture stock, or other benefit, right, claim, or other interest of or in any such corporation, company, public body, or society in that character, without her husband, as if she were a *feme sole*.

Married woman as an executrix or trustee.

Does the Act apply to trust property?

This section, while it affords some remedy for the inconveniences of appointing a married woman trustee, will probably have the effect of narrowing down the construction of the whole Act as to trust property; see note (*b*) to section 1 (1), p. 45, and section 8, p. 86. If it should be held that the Act generally does not apply to trust property, it will not be competent to a married woman trustee to do any act without the concurrence of her husband, except such as she could do before the Act, or can do under this section. For instance, a married woman cannot give a valid receipt without the concurrence of her husband, though it seems to have been held in *Kingsman* v. *Kingsman* (6 Q. B. D. 122), that where a married woman could sue alone, she could also give a valid receipt. It was there held that she could maintain an action alone for trust property by leave under Order XVI. r. 8.

§ 18.

Accepting office of executrix without the concurrence of her husband.

It used to be thought that a married woman could not accept the office of executrix without the consent of her husband, Williams on Exs. 236 ; *In the goods of Dye* (2 Robert. 342) ; but this was doubted in *Clerke* v. *Clerke* (6 P. D. 103). There the husband and wife were living apart, and administration was given to her attorney, under 20 & 21 Vict. c. 77, s. 73, she being willing, but not competent, to take probate.

Administratrix.

The husband's consent is necessary before she can be administratrix, for he has to join in the bond, but she is administratrix alone and not jointly with her husband, *Anon.* (Style, 74) ; *Wood* v. *Brown* (Aleyn, 36), Williams on Exs. 456.

Married woman suing.

As to a married woman suing and being sued, see note (*c*) to section 1 (2), p. 51. A married woman trustee could not before the Act sue alone without leave, *Kingsman* v. *Kingsman* (6 Q. B. D. 122).

As to transferring stocks, etc., see sections 7, 8, and 9 above, pp. 83–87.

Husband's liability.

The separate property of the wife is made liable for her devastavits and breaches of trust by section 24 ; and the husband is not now liable for them unless he intermeddles, see note to section 24, p. 138.

§ 19.

Saving of existing settlements and the power to make future settlements.

19. Nothing in this Act contained shall interfere with or affect any settlement or agreement for a settlement made or to be made, whether before or after marriage, respecting the property of any married woman (*a*), or shall interfere with or render inoperative any restriction against anticipation at present attached or to be hereafter attached to the enjoyment of any property or income by a woman under any settlement, agreement for a settlement,

§ 19. will, or other instrument; but no restriction against anticipation contained in any settlement or agreement for a settlement of a woman's own property to be made or entered into by herself shall have any validity against debts contracted by her before marriage (*b*), and no settlement or agreement for a settlement shall have any greater force or validity against creditors of such woman than a like settlement or agreement for a settlement made or entered into by a man would have against his creditors (*c*).

The necessity for settlements in future.

(*a*) Settlement, as well as restraint on anticipation (see below, note (*b*)), remain unaffected by the Act of 1882. Settlement in this section must be taken to include a settlement upon a woman by a stranger, as well as settlements where husband and wife are parties. The Act does not do away with the necessity for a settlement of a woman's fortune on marriage, or at any rate with the strong advisability of it. The ordinary marriage settlement where the woman is restrained from anticipation protects the *corpus* of the married woman's fortune from her own weakness, as well as from the folly or rapacity of her husband, for the benefit of herself and her children. Property given to trustees for the separate use of a married woman will remain in the legal possession of the trustees, and the married woman will not be able to call for or dispose of the legal estate where she could not have done so before, but there is no distinction between a trustee for a married woman absolutely entitled to her separate use and not restrained from anticipation and a trustee for a man: Master of the Rolls in *Peters* v. *Lewes, &c., Railway Company* (18 C. D. 429, at p. 437).

§ 19.

It may be a question whether this section will prevent the legal interest in property settled on the married woman to her separate use absolutely, from vesting in her. It is submitted it will not, see Introduction, p. 14, note (*a*) to section 1, sub-section (1), p. 42. It was held in *Kane* v. *Kane* (16 C. D. 207), that in a covenant to settle after-acquired property, the words "otherwise settled" included a legacy of £2,000 to the separate use of a married woman, and see *Re Mainwaring's Settlement* (L. R. 2 Eq. 487). But the *ratio decidendi* in both these cases was, that the covenant to settle the after-acquired property was inconsistent with the intention expressed by the donor, that the married woman should hold the property independently of her husband. The Act would not be inconsistent with such an intention but would further it.

The legal interest.

A covenant to settle after-acquired property, will take property given to a married woman out of the operation of the Act. As to wife electing, see *Smith* v. *Lucas* (18 C. D. 531).

After-acquired property.

Any married woman may make or consent to any application under the Settled Estates Act, 1877, whether she be of age or not, section 52, even if she is restrained from anticipation, section 50, but she must be first separately examined, section 52; whether the property is settled to her separate use or not, section 50; and see sections 50–52 of the Settled Estates Act, 1877, and Orders (1878) 13, 14, 27, 28, under that Act. As to the married woman's position under the Settled Land Act, 1882, see Appendix, p. 163.

Settled Estates and Settled Land Acts.

(*b*) The section does not render inoperative any restraint on anticipation, present or future. The 20 & 21 Vict. c. 85, discharges any restraint on anticipation where there is a protection order, *Cooke* v. *Fuller* (26 Beav. 99); or judicial separation, *Munt* v. *Glynes* (20 W. R. 823; 41 L. J. Ch. 639). As to what words

Restraint on anticipation.

§ 19. will create a restraint, see Lewin, 7th ed. 663. The restraint comes into operation on marriage if attached to property given to a *feme sole*, *Tullett* v. *Armstrong* (1 Bea. 1, 4 My. & C. 390); *Sanger* v. *Sanger* (L. R. 11 Eq. 470); and revives on subsequent marriage, *Re Gaffee* (1 M. & G. 541; 7 Ha. 101). A restraint on anticipation on property given to a married woman if she should survive her husband, will restrain her during marriage, *Molyneux's Estate* (I. R. 6 Eq. 411). It applies to an absolute gift of property producing income, *Re Ellis* (L. R. 17 Eq. 409); but not to a sum of uninvested cash, *Re Croughton's Trust* (8 C. D. 460). But where there was a trust to invest a residuary fund, and stand possessed for daughters attaining twenty-one or marrying, to their separate use without power of anticipation, the trustees were not allowed to pay the fund to the daughters, *Re Benton*, *Smith* v. *Smith* (19 C. D. 277); and see *Re Clarke* (30 W. R. 778, Fry, J.); *Re Taber* (W. N. (1882) 107 (V. C. B.)). It will not prevent a married woman from enlarging an estate tail held to her separate use where the restraint was on the life estate *Cooper* v. *Macdonald* (7 C. D. 289 (C. A.), 300). Fraud will not render it inoperative, *Thomas* v. *Price* (46 L. J. N. S. Ch. 761); *Stanley* v. *Stanley* (7 C. D. 589), nor breach of trust under the same settlement, *Clive* v. *Carew* (1 J. & H. 199). The Court could not discharge the restraint, even when it was for the benefit of the married woman to do so, *Robinson* v. *Wheelwright* (6 D. M. G. 535), but see *Willoughby* v. *Middleton* (2 J. & H. 344, 355); *Smith* v. *Lucas* (18 C. D. 531, 545); except on an application under the Settled Estates Act, 1877, see section 50. But by section 39 of the Conveyancing Act, 1881, Appendix, p. 157, "notwithstanding that a married woman is restrained from anticipation, the Court may, if it thinks fit, where it appears to the Court to be

§ 19.

for her benefit, by judgment or order, with her consent, bind her interest in any property." Application must be made by summons in chambers, *Re Lillwall* (W. N. (1882), 6). In *Hodges* v. *Hodges* (30 W. R. 483, W. N. ('82), 53), a married woman had a fund to her separate use, without power of anticipation, and in default of issue a general power of appointment, and subject thereto to her absolutely. There were no children, and she was past child-bearing, and much pressed by her creditors. Held, by Fry, J., that it was for her benefit to remove the restraint. But in *Tamplin* v. *Miller* (W. N. ('82), 44), V.-C. Hall held that the Court will only exercise its discretion on strong evidence that it is for the benefit of the wife. And he doubted whether it could be exercised without the separate examination of the wife. See also *Re Bushby* (V.-C. B., 46 L. T. 268).

Liability where restraint.

But on a sale in a partition suit costs can be charged on the share of a married woman, although subject to a restraint on anticipation, *Fleming* v. *Armstrong* (34 Beav. 109); and so can costs of resisting the setting aside of a post-nuptial settlement, *Re Keane* (L. R. 12 Eq. 115). Property subject to the restraint cannot be rendered liable or disposed of during marriage, *Roberts* v. *Watkins* (36 L. T. N. S. 779); *Davies* v. *Ballenden* (W. N. (1882), 92 (C. A.)); nor on discoverture, *Pike* v. *Fitzgibbon* (17 C. D. 454); but dividends accruing due before the act of disposition are not protected, *Moore* v. *Moore* (1 Coll. 54); *Fitzgibbon* v. *Blake* (3 Ir. Ch. 328). Interest does not for this purpose accrue de die in diem, and an apportioned part of interest cannot be assigned, *Re Brettle* (2 D. J. & S. 79); *Jolland* v. *Burdett* (10 Jur. N. S. 349).

Ante-nuptial liability.

The restraint does not protect the property from ante-nuptial debts under section 12 of the Act of 1870, *Sanger* v. *Sanger* (L. R. 11 Eq. 470), where the property belonged

§ 19. to the wife before marriage, but the restraint was attached to it by a stranger; see also *London and Pro. Bank* v. *Bogle* (7 C. D. 773); *Chubb* v. *Stretch* (L. R. 9 Eq. 555); and see note (*a*) to section 13, p. 102. By this 19th section, no restraint on anticipation in any settlement or agreement for a settlement of a woman's own property to be made or entered into by herself, shall have any validity against debts contracted by her before marriage. These words would seem by implication to enact that where the restraint was attached by a stranger it would be effectual; and it is to be observed that the restraint is to have no validity against debts only, and under this Act the difference of language is so marked, that it will be difficult to contend that debts include breaches of contract, as was held in Ireland under the Act of 1870, *Conlon* v. *Moore* (9 Ir. Rep. C. L. 190). So that a restraint on anticipation will be a bar to the liability of a married woman for her ante-nuptial contracts (including, under section 24, breaches of trust) and torts, unless it should be held that she would be liable as fully as before following the decisions in *Sanger* v. *Sanger* (L. R. 11 Eq. 470); *London and Pro. Bank* v. *Bogle* (7 C. D. 773), mentioned above.

Bankruptcy Act, 1869.

(*c*) Married women are within the 13 Eliz. c. 5, but it is a question whether all married women, or only married women within section 1 (5), are within the Bankruptcy Act, 1869. See note to section 1, sub-section (5), p. 64. Under section 91 of the Bankruptcy Act, any settlement of property made by a trader (which will include a woman within section 1 (5)), not being a settlement made before and in consideration of marriage, or made in favour of a purchaser or incumbrancer in good faith and for valuable consideration, is void against the trustee in bankruptcy, if the settlor becomes bankrupt within *two* years after the date of such settlement, and if

32 & 33 Vict. c. 71, s. 91.

he becomes bankrupt within *ten* years, unless the parties claiming under such settlement can prove that the settlor was at the time of making the settlement able to pay all his debts without the aid of the property comprised in such settlement : and any covenant or contract made by a trader, in consideration of marriage, for the future settlement upon or for his wife or children of any money or property wherein he had not at the date of his marriage any estate or interest, whether vested or contingent, in possession or remainder, shall, upon his becoming bankrupt before such property or money has been actually transferred or paid pursuant to such contract or covenant, be void against the trustee. § 19.

The main difference between the 13 Eliz. c. 5, and the Bankruptcy Acts is, that the object of the former is to prevent the debtor making a fraudulent settlement on himself, while the object of the latter is to divide his assets equally among his creditors. Therefore a deed conveying the debtor's whole property for the benefit of some creditors to the exclusion of others, is good under the statute of Elizabeth so long as it is not a cloak for the benefit of the debtor, *Alton* v. *Harrison* (4 Ch. 622) ; *Allen* v. *Bonnett* (5 Ch. 577) ; *Ex parte Huxtable* (2 C. D. 54). An intent to defraud is inferred if, after deducting the property comprised in the deed, sufficient available assets are not left for the payment of the grantor's debts, *Freeman* v. *Pope* (5 Ch. 538) ; or if the grantor at the time of its execution contemplates engaging in a hazardous business, *Mackay* v. *Douglas* (L. R. 14 Eq. 106) ; and in that case the deed was set aside at the suit of subsequent creditors ; and subsequent creditors may set the deed aside in any case if any antecedent creditor remains unsatisfied, *Townshend* v. *Westucott* (2 Beav. 340). If there is valuable consideration for the deed the intent to defraud must be strictly proved, 13 Eliz. c. 5.

§ 19. *Holmes* v. *Penney* (3 K. & J. 90); *Harman* v. *Richards* (10 Ha. 81, 89); *Thompson* v. *Webster* (4 De G. & J. 600); *Freeman* v. *Pope* (5 Ch. 538).

§ 20. Married woman to be liable to the parish for the maintenance of her husband.

20. Where in England the husband of any woman having separate property becomes chargeable to any union or parish, the justices having jurisdiction in such union or parish may, in petty sessions assembled, upon application of the guardians of the poor, issue a summons against the wife, and make and enforce such order against her for the maintenance of her husband out of such separate property as by the thirty-third section of the Poor Law Amendment Act, 1868, they may now make and enforce against a husband for the maintenance of his wife if she becomes chargeable to any union or parish. Where in Ireland relief is given under the provisions of the Acts relating to the relief of the destitute poor to the husband of any woman having separate property, the cost price of such relief is hereby declared to be a loan from the guardians of the union in which the same shall be given, and shall be recoverable from such woman as if she were a feme sole by the same actions and proceedings as money lent.

31 & 32 Vict. c. 122.

This is a re-enactment of section 13 of the Act of 1870, see Appendix, p. 148. The 31 & 32 Vict. c. 122, s. 33, provides that the Justices may upon the application of the guardians order the husband of a wife applying for relief without him to pay such weekly sum to-

§ 20.

wards her maintenance as may appear to them proper, and the order can be enforced under 11 & 12 Vict. c. 43, s. 19. Where a woman who had left her husband on account of his ill-treatment applied for relief, the order was held to have been rightly made on the wife's refusal to return to cohabitation with the husband, though he offered to receive her back, *Thomas* v. *Alsop* (L. R. 5 Q. B. 151). But a husband is not liable to be ordered to maintain a wife with whom he has ceased to cohabit in consequence of her adultery, *Culley* v. *Charman* (7 Q. B. D. 89). The Court will not stop a fund in court to the credit of a married woman liable to maintain a pauper husband or pay it out subject to the claim of the guardians. The jurisdiction is in the Justices, *Elliot* v. *Hooper* (W. N. ('74), 57).

§ 21.

21. A married woman having separate property shall be subject to all such liability for the maintenance of her children and grandchildren as the husband is now by law subject to for the maintenance of her children and grandchildren: Provided always, that nothing in this Act shall relieve her husband from any liability imposed upon him by law to maintain her children and grandchildren.

Married woman to be liable to the parish for the maintenance of her children. (*sic.*) [And grandchildren.]

Married woman liable under the Act of 1870 to maintain children; under Act of 1882

This section supersedes section 14 of the Act of 1870, see Appendix, p. 149. Under that section the married woman was subject to the same liability to maintain her children as a *widow*. But she was not liable to maintain her grandchildren, *Coleman* v. *Overseers of Birmingham* (6 Q. B. D. 615), nor any of her pauper relations before that Act, and the statute of Elizabeth does not apply to married women (*Ibid.*). But under the present section

§ 21. she is under the same liabilty as her *husband* for the maintenance of both her children and grandchildren. There seems to be no practical difference between the two sections; the wife is only liable for her own children. Her husband is not relieved of his former liability, but he is not made primarily liable. It is apparently in the discretion of the guardians whether the order shall be made against the husband or wife.

grandchildren also.

Before the Acts.

There was no liability either at law or in equity for a married woman to maintain her children before the Married Women's Property Acts; nor to contribute to their maintenance out of her separate property on the petition of the children; and still less of the husband, *Hodgens* v. *Hodgens* (4 Cl. & Fin. 323, 373), where the children were destitute and the mother had eloped; and see *Eyre* v. *Countess of Shaftesbury* (2 W. & T. 633).

Father or widow.

A father and a widow are both liable under 43 Eliz. c. 2, s. 7, to maintain their children, grandchildren, and parents. A married woman is only made liable for children and grandchildren under this Act. There is no common law liability, and therefore the person liable cannot be sued on an implied contract to pay for necessaries supplied to the children, *Cooper* v. *Martin* (4 East, 76, esp. 84); *Urmston* v. *Newcomen* (4 A. & E. 899). But a married woman having separate property is liable to be convicted under the Vagrancy Act, 5 Geo. 4, c. 83, ss. 3 & 4, for deserting her children, *Peters* v. *Cowie* (2 Q. B. D. 131).

Maintenance.

On an application for maintenance out of property to which the children are presumptively entitled, there is no inquiry whether the widow is able to maintain them, as there would be in the case of a father. Maintenance was allowed irrespective of her income, *Douglas* v. *Andrews* (12 Bea. 310), and whether she married again or not, *Greenwell* v. *Greenwell* (5 Ves. 194); *Billingsley*

v. *Critchett* (1 Bro. C. C. 268); and this was so although there was a statutory liability under 43 Eliz. c. 2, s. 7. And it is submitted that the same rule will apply in the case of a mother liable to maintain her children under this section, unless the fact that the married woman is under the same liability as the husband will alter the practice. **§ 21.**

22. The Married Women's Property Act, 1870, and the Married Women's Property Act, 1870, Amendment Act, 1874, are hereby repealed: Provided that such repeal shall not affect any act done or right acquired while either of such Acts was in force, or any right or liability of any husband or wife, married before the commencement of this Act, to sue or be sued under the provisions of the said repealed Acts or either of them, for or in respect of any debt, contract, wrong, or other matter or thing whatsoever, for or in respect of which any such right or liability shall have accrued to or against such husband or wife before the commencement of this Act. **§ 22.**

Repeal of 33 & 34 Vict. c. 93, 37 & 38 Vict. c. 50.

Rights and liabilities under Acts of 1870, 1874.

The wife could sue under the 11th section of the Act of 1870, in respect of any property declared by that Act to be her separate property; or in respect of any property belonging to her before marriage, and which her husband should by writing under his hand have agreed with her should belong to her after marriage as her separate property, see note (*c*) to section 1, sub-section (2) above, p. 53; and had in her own name the same remedies both

§ 22. civil and criminal against all persons whomsoever, for the protection and security of such property, as if it belonged to her as an unmarried woman, see note (*a*) to section 12 above, p. 96. She could not be sued under the Act of 1870 except under section 12 for her ante-nuptial debts. The husband is liable to be sued, if he is within the Act of 1874, for his wife's ante-nuptial debts, breaches of contracts, and torts. The husband or wife could also apply under section 9 of the Act of 1870 in any question between them as to property declared by that Act to be the separate property of the wife, see notes to section 17 above, p. 117. The right of suing or being sued reserved, only extends to rights and liabilities accruing before the Act of 1882. But there will be a right of action under the Act of 1882 for rights and liabilities accrued before the Act, *Midland Ry. Co.* v. *Pye* (C. B., N. S. 179, 192).

The Statute of Limitations.

The Statute of Limitations was held not to apply to separate property, *Hodgson* v. *Williamson* (15 C. D. 87); and if this is so as to separate property under the Acts of 1870-4, which however can hardly be said to be impressed with a trust, it will be some time before the Acts of 1870 and 1874 are wholly superseded.

§ 23. 23. For the purposes of this Act the legal personal representative of any married woman shall in respect of her separate estate have the same rights and liabilities and be subject to the same jurisdiction as she would be if she were living.

Legal representative of married woman.

Is to stand in her place.

The legal personal representative of a married woman is her executor, or husband, who generally has a right to administration, but where it is administration with the

will annexed, administration will now be granted to the person having the beneficial interest. See cases in Introduction, pp. 36-41. **§ 23.**

As to how far the legal personal representative stands in the place of his testator or intestate see Williams on Exs. pp. 792, 898, 1940, 2013. He is liable to all equitable demands which existed against the deceased at the time of his death, *Adair* v. *Shaw* (1 Sch. & L. 243). It is presumed that the legal personal representative will not under this section be enabled to stand in the place of a married woman where the legal personal representative of a *feme sole* could not stand in her place. For instance, he could not bring an action for a personal tort after the death of the married woman. But he could apply under section 17, p. 114.

24. The word "contract" in this Act shall include the acceptance of any trust, or of the office of executrix or administratrix, and the provisions of this Act as to liabilities of married women shall extend to all liabilities by reason of any breach of trust or devastavit committed by any married woman being a trustee or executrix or administratrix (*a*), either before or after her marriage, and her husband shall not be subject to such liabilities unless he has acted or intermeddled in the trust or administration (*b*). The word "property" in this Act includes a thing in action (*c*). **§ 24.** Interpretation of terms.

(*a*) A married woman is made liable on her contracts, which by this section include the acceptance of any trust, or of the office of executrix or administratrix, to the A married woman is liable for her

§ 24.

breach of trust and devastavits.

extent of her separate estate: Act of 1882, section 1 (2), (3), and see note (*a*), p. 48, and note, p. 60. As to husband's consent to her taking probate, see note to section 18, p. 124. Every contract entered into by her is to be deemed a contract entered into with respect to and to bind her separate property, unless the contrary be shown, section 1 (3). A husband can accept the office of legal personal representative in the name of his wife without her consent, and in case he does so, and she does not intermeddle with the estate and renounces on his death, she is not liable for his acts: 1 Roper, Husband & Wife, 196; and it is submitted that in such a case the wife's separate property would not be liable under this section, but the onus of proof would probably be on the wife to show that she had not accepted the office.

Married woman's liability before the Act.

Before the Act of 1882 a married woman's separate property was not liable during coverture for her breaches of trust or devastavits, *Wainford* v. *Heyl* (L. R. 20 Eq. 321), though perhaps her separate property under the same settlement could be reached, *Clive* v. *Carew* (1 J. & H. 199); *Keays* v. *Lane* (I. R. 3 Eq. 1), but not if there was a restraint on anticipation, *Arnold* v. *Woodhams* (L. R. 16 Eq. 29). But on discoverture she is personally liable both for acts committed by herself before marriage and for acts committed by her husband or herself during marriage, *Adair* v. *Shaw* (1 Sch. & L. 243, 257); *Kingham* v. *Lee* (15 Sim. 396); *Clough* v. *Dixon* (8 Sim. 594); *Soady* v. *Turnbull* (L. R. 1 Ch. 494).

Her husband liable if he intermeddles.

(*b*) This section, though it makes the wife liable for her breaches of trust and devastavits, does not relieve the husband of his liability for them except where he has not acted or intermeddled in the trust or administration. Whether the trust or office of legal personal representative is undertaken during coverture or before, he is still liable if he intermeddles. It is presumed that giving his

consent to her taking probate, *Clerke* v. *Clerke* (6 P. D. 103), would not be held to be intermeddling. Before the Act he was liable for the breaches of trust and devastavits of his wife, whether he intermeddled or not, but he was not liable for them after the coverture was dissolved, *Adair* v. *Shaw* (1 Sch. & L. 243, 263). His estate was liable for the wife's devastavit committed during coverture, *Smith* v. *Smith* (21 Beav. 385). The separate property acquired by the married woman after the breach of trust or devastavit will be equally liable with that acquired before it, section 1 (4). If he intermeddles with the trust after marriage, the husband will be liable for the wife's breaches of trust and devastavits before marriage up to the value of the property made assets by section 14, see note (*a*), p. 106, and the wife, in respect of her separate estate, will be primarily liable for her breaches of trust and devastavits before marriage, section 13, p. 103. Outside the Acts of 1874 and 1882 the husband is personally liable during coverture only for his wife's ante-nuptial breaches of trust and devastavits, *Adair* v. *Shaw* (1 Sch. & L. 243, 263), and there seems no reason to hold that his liability, as limited by the Acts of 1874 and 1882, is to extend beyond coverture, but see section 14, note (*d*) p. 110. But whether within the Acts of 1874 and 1882 or not, he is liable in equity, after her death, for any assets which may have come into his hands as her administrator, *Adair* v. *Shaw* (*u. s.* 261); Williams on Exs., 1844. And for her acts during marriage he is liable even if they are living apart, *Paget* v. *Read* (1 Vern. 143). **§ 24.**

(*c*) The word property in the Act is to include thing in action. It was recently held in *Re Biaggi* (W. N. (1882), 65), that the husband's interest before the Act in the wife's choses in action was not a mere possibility, but property subject to their being reduced into possession. Property to include thing in action.

§ 25. Commencement of Act.

25. The date of the commencement of this Act shall be the first of January, one thousand eight hundred and eighty-three.

An Act is taken to come into operation on the first instant of the day named for its commencement, so that a marriage taking place on the morning of the 1st January, 1883, will be a marriage within the Act, *Tomlinson* v. *Bullock* (4 Q. B. D. 230).

§ 26. Extent of Act.

26. This Act shall not extend to Scotland.

The Scotch law as to married women was founded on the Roman, and was slightly more beneficial to them than the English. It has been recently modified and assimilated to this Act by 40 & 41 Vict. c. 29, and 43 & 44 Vict. c. 21.

§ 27. Short title.

27. This Act may be cited as "The Married Women's Property Act, 1882."

APPENDIX.

THE MARRIED WOMEN'S PROPERTY ACT, 1870.

(33 & 34 VICT. c. 93.)

An Act to amend the Law relating to the Property of Married Women. [9th August, 1870.]

WHEREAS it is desirable to amend the law of property and contract with respect to married women:

Be it enacted, etc., as follows:

Earnings of married women to be deemed their own property.

1. The wages and earnings (*a*) of any married woman acquired or gained by her after the passing of this Act in any employment, occupation, or trade in which she is engaged or which she carries on separately from her husband (*b*), and also any money, or property so acquired by her through the exercise of any literary, artistic, or scientific skill, and all investments (*c*) of such wages, earnings, money, or property, shall be deemed and be taken to be property held and settled to her separate use, independent of any husband to whom she may be married (*d*), and her receipts alone shall be a good discharge for such wages, earnings, money and property.

(*a*) As to wages and earnings gained under this section, see Act of 1882, section 2, note (*a*), p. 66; section 5, note (*b*), p. 77.

Append.

(*b*) As to what is a separate trade, see Act of 1882, section 1 (5), note, p. 65 : and section 5, note (*b*), p. 77.

(*c*) All investments which at the commencement of the Act of 1882 were standing in the sole name of a married woman, or in the joint names of the married woman and any person other than her husband, are to be deemed, unless or until the contrary be shown, to be the separate property of such married woman, and her husband need not join in transferring them ; Act of 1882, sections 6, 8, 9, pp. 76-87, and notes ; and as to investments made since the Act of 1882, see sections 7, 8, 9, pp. 83–87, and notes.

(*d*) It might be a question whether a woman who had acquired separate property under this section of the Act of 1870, and then married again before the Act of 1882 came into operation, would still hold such property for her separate use, or whether it would vest in her husband ; this has not been decided, but see and consider *Wright* v. *Wright* (2 J. & H. 647), and the cases collected in Lewin, 7th ed., 646.

Deposits in savings banks by a married woman to be deemed her separate property.

2. Notwithstanding any provision to the contrary in the Act of the tenth year of George the Fourth, chapter twenty-four, enabling the Commissioners for the Reduction of the National Debt to grant life annuities and annuities for terms of years, or in the Acts relating to savings banks and post office savings banks, any deposit hereafter made and any annuity granted by the said Commissioners under any of the said Acts in the name of a married woman, or in the name of a woman who may marry after such deposit or grant, shall be deemed to be the separate property of such woman, and the same shall be accounted for and paid to her as if she were an unmarried woman ; provided that if any such deposit is made by, or such annuity granted to, a married woman by means of moneys of her husband without his consent, the Court may, upon an application under section nine of this Act, order such deposit or annuity or any part thereof to be paid to the husband (*a*).

Proviso.

(*a*) See note to section 5, below.

Append.

As to a married woman's property in the funds.

3. Any married woman, or any woman about to be married, may apply to the Governor and Company of the Bank of England, or to the Governor and Company of the Bank of Ireland, by a form to be provided by the governor and company of each of the said banks for that purpose, that any sum forming part of the public stocks and funds, and not being less than twenty pounds, to which the woman so applying is entitled, or which she is about to acquire, may be transferred to or made to stand in the books of the governor and company to whom such application is made in the name or intended name of the woman as a married woman entitled to her separate use, and on such sum being entered in the books of the said governor and company accordingly the same shall be deemed to be the separate property of such woman, and shall be transferred and the dividends paid as if she were an unmarried woman; provided that if any such investment in the funds is made by a married woman by means of moneys of her husband without his consent, the Court may, upon an application under section nine of this Act, order such investment and the dividends thereof, or any part thereof, to be transferred and paid to the husband (*a*).

(*a*) See note to section 5, below.

As to a married woman's property in a joint stock company.

4. Any married woman, or any woman about to be married, may apply in writing to the directors or managers of any incorporated or joint stock company that any fully paid up shares, or any debenture or debenture stock, or any stock, of such company, to the holding of which no liability is attached, and to which the woman so applying is entitled, may be registered in the books of the said company in the name or intended name of the woman as a married woman entitled to her

Append. separate use, and it shall be the duty of such directors or managers to register such shares or stock accordingly, and the same upon being so registered shall be deemed to be the separate property of such woman, and shall be transferred and the dividends and profits paid as if she were an unmarried woman; provided that if any such investment as last mentioned is made by a married woman by means of moneys of her husband without his consent, the Court may, upon an application under section nine of this Act, order such investment and the dividends and profits thereon, or any part thereof, to be transferred and paid to the husband (*a*).

(*a*) See note to section 5, below.

As to a married woman's property in a society.

5. Any married woman, or any woman about to be married, may apply in writing to the committee of management of any industrial and provident society, or to the trustees of any friendly society, benefit building society, or loan society, duly registered, certified, or enrolled under the Acts relating to such societies respectively, that any share, benefit, debenture, right, or claim whatsoever in, to, or upon the funds of such society, to the holding of which share, benefit, or debenture no liability is attached, and to which the woman so applying is entitled, may be entered in the books of the society in the name or intended name of the woman as a married woman entitled to her separate use, and it shall be the duty of such committee or trustees to cause the same to be so entered, and thereupon such share, benefit, debenture, right, or claim shall be deemed to be the separate property of such woman, and shall be transferable and payable with all dividends and profits thereon as if she were an unmarried woman; provided that if any such share,

benefit, debenture, right, or claim has been obtained by a married woman by means of moneys of her husband without his consent, the Court may, upon an application under section nine of this Act, order the same and the dividends and profits thereon, or any part thereof, to be transferred and paid to the husband (*a*). **Append.**

(*a*) These sections (2, 3, 4, and 5) are superseded by sections 6, 7, 8, and 9 of the Act of 1882, except as to rights acquired and liabilities incurred under them, which remain unaffected by Act of 1882, section 22; and as to such rights see notes to sections 6, 7, 8, and 9 of the Act of 1882, p. 80, *et seq.*

As to fraudulent investments with the husband's money, see Act of 1882, section 10, which re-enacts almost *iisdem verbis* the proviso at the end of each of these sections.

Since the Act of 1882 there can be no longer any fraud on the marital right as there might have been under the Act of 1870. See Act of 1882, section 2, note (*a*), p. 66.

Deposit of moneys in fraud of creditors invalid.

6. Nothing hereinbefore contained in reference to moneys deposited in or annuities granted by savings banks or moneys invested in the funds or in shares or stock of any company shall as against creditors of the husband give validity to any deposit or investment of moneys of the husband made in fraud of such creditors, and any moneys so deposited or invested may be followed as if this Act had not passed (*a*).

(*a*) See Act of 1882, section 10, note (*d*), p. 90.

Personal property not exceeding £200 coming to a married woman to be her own. (*sic.*)

7. Where any woman married after the passing of this Act shall during her marriage become entitled to any personal property as next of kin or one of the next of kin of an intestate, or to any sum of money not exceeding two hundred pounds under any deed or will, such property shall, subject and without prejudice to the trusts of any settlement affecting the same, belong to the woman

Append.

for her separate use, and her receipts alone shall be a good discharge for the same (*a*).

(*a*) See Act of 1882, section 5, note (*a*), p. 74. The marginal note is inaccurate.

Freehold property coming to a married woman, rents and profits. (*sic.*)

8. Where any freehold, copyhold, or customaryhold property shall descend upon any woman married after the passing of this Act as heiress or co-heiress of an intestate, the rents and profits of such property shall, subject and without prejudice to the trusts of any settlement affecting the same, belong to such woman for her separate use, and her receipts alone shall be a good discharge for the same (*a*).

(*a*) See Act of 1882, section 5, note (*a*), p. 74. Introduction, p. 14, and Act of 1882, section 1, sub-section 1, notes pp. 43, 46. The marginal note is inaccurate.

How questions as to ownership of property to be settled.

9. In any question between husband and wife as to property declared by this Act to be the separate property of the wife, either party may apply by summons or motion in a summary way either to the Court of Chancery in England or Ireland according as such property is in England or Ireland, or in England (irrespective of the value of the property) the judge of the County Court of the district in which either party resides, and thereupon the judge may make such order, direct such inquiry, and award such costs, as he shall think fit; provided that any order made by such judge shall be subject to appeal in the same manner as the order of the same judge made in a pending suit or on an equitable plaint would have been, and the judge may, if either party so require, hear the pplication in his private room (*a*).

(*a*) See Act of 1882, section 17, notes p. 117.
A husband or wife married before the Act of 1882 can still apply under this 9th section, if the right or liability of suing or being sued accrued before the commencement of that Act; see Act of 1882, section 22, p. 135.

Married woman may effect policy of insurance.

10. A married woman may effect a policy of insurance upon her own life or the life of her husband for her separate use, and the same and all benefit thereof, if expressed on the face of it to be so effected, shall enure accordingly, and the contract in such policy shall be as valid as if made with an unmarried woman.

As to insurance of a husband for benefit of his wife.

A policy of insurance effected by any married man on his own life, and expressed upon the face of it to be for the benefit of his wife or of his wife and children, or any of them, shall enure and be deemed a trust for the benefit of his wife for her separate use, and of his children, or any of them, according to the interest so expressed, and shall not, so long as any object of the trust remains, be subject to the control of the husband or to his creditors, or form part of his estate. When the sum secured by the policy becomes payable, or at any time previously, a trustee thereof may be appointed by the Court of Chancery in England or in Ireland according as the policy of insurance was effected in England or in Ireland, or in England by the judge of the County Court of the district, or in Ireland by the chairman of the Civil Bill Court of the division of the county, in which the insurance office is situated, and the receipt of such trustee shall be a good discharge to the office. If it shall be proved that the policy was effected and premiums paid by the husband with intent to defraud his creditors, they shall be entitled to receive out of the sum secured an amount equal to the premiums so paid (*a*).

(*a*) See Act of 1882, section 11, notes p. 93.

Append.

Married women may maintain an action.

11. A married woman may maintain an action in her own name for the recovery of any wages, earnings, money, and property by this Act declared to be her separate property, or of any property belonging to her before marriage, and which her husband shall, by writing under his hand, have agreed with her shall belong to her after marriage as her separate property (*a*), and she shall have in her own name the same remedies, both civil and criminal, against all persons whomsoever for the protection and security of such wages, earnings, money, and property, and of any chattels, or other property purchased or obtained by means thereof for her own use, as if such wages, earnings, moneys, chattels, and property belonged to her as an unmarried woman; and in any indictment or other proceedings it shall be sufficient to allege such wages, earnings, money, chattels, and property to be her property (*b*).

(*a*) See Act of 1882, section 2, sub-section 2, note (*c*), p. 51.
(*b*) See Act of 1882, section 12, note (*a*), p. 96.

Husband not to be liable on his wife's contracts before marriage.

12. A husband shall not, by reason of any marriage which shall take place after this Act has come into operation, be liable for the debts of his wife contracted before marriage, but the wife shall be liable to be sued for, and any property belonging to her for her separate use shall be liable to satisfy, such debts as if she had continued unmarried (*a*).

(*a*) See Act of 1874 below, p. 150, and notes to Act of 1882, sections 13, 14, and 15, pp. 99, 105, 113.

Married woman to be liable to the

13. Where in England the husband of any woman having separate property becomes chargeable to any union or parish, the justices having jurisdiction in such

union or parish may, in petty sessions assembled, upon application of the guardians of the poor, issue a summons against the wife, and make and enforce such order against her for the maintenance of her husband as by the thirty-third section of "The Poor Law Amendment Act, 1868," they may now make and enforce against a husband for the maintenance of his wife who becomes chargeable to any union or parish. Where in Ireland relief is given under the provisions of the Acts relating to the relief of the destitute poor to the husband of any woman having separate property, the cost price of such relief is hereby declared to be a loan from the guardians of the union in which the same shall be given, and shall be recoverable from such woman as if she were a feme sole by such and the same actions and proceedings as money lent (*a*).

parish for the maintenance of her husband.

(*a*) See Act of 1882, section 20, note p. 132.

14. A married woman having separate property shall be subject to all such liability for the maintenance of her children as a widow is now by law subject to for the maintenance of her children: Provided always, that nothing in this Act shall relieve her husband from any liability at present imposed upon him by law to maintain her children (*a*).

Married woman to be liable to the parish for the maintenance of her children.

(*a*) See Act of 1882, section 21, note p. 133.

15. This Act shall come into operation at the time of the passing of this Act (*a*).

Commencement of Act.

(*a*) The 9th of August, 1870.

16. This Act shall not extend to Scotland (*a*).

Act not to extend to Scotland.

(*a*) See Act of 1882, section 26, p. 140.

Append. Short title.

17. This Act may be cited as the "Married Women's Property Act, 1870."

THE

MARRIED WOMEN'S PROPERTY ACT (1870) AMENDMENT ACT (1874).

(37 & 38 VICT. c. 50.)

An Act to amend the Married Women's Property Act (1870). [30th July, 1874.

WHEREAS it is not just that the property which a woman has at the time of her marriage (*a*) should pass to her husband, and that he should not be liable for her debts contracted before marriage, and the law as to the recovery of such debts requires amendment:

(*a*) Compare section 5 below, and see note (*c*) to section 14 of the Act of 1882, p. 108.

Be it enacted, &c. as follows:

Husband and wife may be jointly sued for her debts before marriage.

1. So much of the Married Women's Property Act, 1870, as enacts that a husband shall not be liable for the debts of his wife contracted before marriage is repealed so far as respects marriages which shall take place after the passing of this Act, and a husband and wife married after the passing of this Act may be jointly sued for any such debt (*a*).

(*a*) See Act of 1882, section 14, note (*a*), p. 105.

Append.

2. The husband shall, in such action and in any action brought for damages sustained by reason of any tort committed by the wife before marriage or by reason of the breach of any contract made by the wife before marriage, be liable for the debt or damages respectively to the extent only of the assets herein-after specified; and in addition to any other plea or pleas may plead that he is not liable to pay the debt or damages in respect of any such assets as herein-after specified; or, confessing his liability to some amount, that he is not liable beyond what he so confesses; and if no such plea is pleaded the husband shall be deemed to have confessed his liability so far as assets are concerned (*a*).

Extent to which husband liable.

(*a*) See Act of 1882, section 14, note (*a*), p. 105.

3. If it is not found in such action that the husband is liable in respect of any such assets, he shall have judgment for his costs of defence, whatever the result of the action may be against the wife (*a*).

If husband without assets he shall have judgment for costs.

(*a*) See Act of 1882, section 15, note (*b*), p. 113.

4. When a husband and wife are sued jointly, if by confession or otherwise it appears that the husband is liable for the debt or damages recovered, or any part thereof, the judgment to the extent of the amount for which the husband is liable shall be a joint judgment against the husband and wife, and as to the residue, if any, of such debt or damages, the judgment shall be a separate judgment against the wife (*a*).

Joint and separate judgment against husband and wife for debt.

(*a*) See Act of 1882, section 15, note (*c*), p. 113.

5. The assets in respect of and to the extent of which

Assets for which

Append. husband liable.

the husband shall in any such action be liable are as follows :

(1.) The value of the personal estate in possession of the wife which shall have vested in the husband :

(2.) The value of the choses in action of the wife which the husband shall have reduced into possession, or which with reasonable diligence he might have reduced into possession :

(3.) The value of the chattels real of the wife which shall have vested in the husband and wife :

(4.) The value of the rents and profits of the real estate of the wife which the husband shall have received, or with reasonable diligence might have received :

(5.) The value of the husband's estate or interest in any property real or personal, which the wife in contemplation of her marriage with him shall have transferred to him or to any other person :

(6.) The value of any property, real or personal, which the wife in contemplation of her marriage with the husband shall with his consent have transferred to any person with the view of defeating or delaying her existing creditors (*a*) :

Provided that when the husband after marriage pays any debt of his wife or has a judgment bonâ fide recovered against him in any such action as is in this Act mentioned, then to the extent of such payment or judgment the husband shall not in any subsequent action be liable (*b*).

(*a*) See Act of 1882, section 14, note (*c*), p. 108.
(*b*) See Act of 1882, section 14, note (*d*), p. 110.

6. This Act shall not extend to Scotland (*a*). **Append.**

Extent of Act.

(*a*) See Act of 1882, section 26, note p. 140.

7. This Act may be cited as the "Married Women's Property Act (1870) Amendment Act, 1874." Short title.

THE DIVORCE AND MATRIMONIAL CAUSES ACT, 1857.

20 & 21 VICT. c. 85.

An Act to amend the Law relating to Divorce and Matrimonial Causes in England. [28th August, 1857.

Wife deserted by her husband may apply to a police magistrate or justices in petty sessions for protection.

21. A wife deserted by her husband may at any time after such desertion, if resident within the metropolitan district, apply to a police magistrate, or, if resident in the country, to justices in petty sessions, or in either case to the Court, for an order to protect any money or property she may acquire by her own lawful industry, and property which she may become possessed of, after such desertion, against her husband or his creditors, or any person claiming under him: and such magistrate or justices or Court, if satisfied of the fact of such desertion, and that the same was without reasonable cause, and that the wife is maintaining herself by her own industry or property, may make and give to the wife an order protecting her earnings and property acquired since the commencement of such desertion, from her husband and all creditors and persons claiming under him, and such earnings and property shall belong to

Append. the wife as if she were a feme sole: Provided always that every such order, if made by a police magistrate or justices at petty sessions, shall, within ten days after the making thereof, be entered with the Registrar of the County Court within whose jurisdiction the wife is resident; and that it shall be lawful for the husband, and any creditor or other persons claiming under him to apply to the Court, or to the magistrate or justices, by whom such order was made for the discharge thereof: provided also, that if the husband or any creditor of or person claiming under the husband shall seize or continue to hold any property of the wife after notice of any such order, he shall be liable at the suit of the wife (which she is hereby empowered to bring) to restore the specific property, and also for a sum equal to double the value of the property so seized or held after such notice as aforesaid. If any such order of protection be made, the wife shall during the continuance thereof be and be deemed to have been, during such desertion of her, in the like position in all respects with regard to property and contracts, and suing and being sued, as she would be under this Act if she obtained a decree of judicial separation.

In case of a judicial separation, the wife to be considered a feme sole with respect to property she may acquire, &c.

25. In every case of a judicial separation, the wife shall, from the date of the sentence, and whilst the separation shall continue, be considered as a feme sole with respect to property of every description which she may acquire or which may come to or devolve upon her; and such property may be disposed of by her in all respects as a feme sole, and on her decease the same shall, in case she shall die intestate, go as the same would have gone if her husband had been then dead: Provided that if any such wife should again cohabit with her husband, all such property as she may be entitled to when such

cohabitation shall take place shall be held to her separate use, subject, however, to any agreement in writing made between herself and her husband whilst separate.

26. In every case of a judicial separation, the wife shall, whilst so separated, be considered as a feme sole for the purposes of contract, and wrongs and injuries, and suing and being sued in any civil proceeding; and her husband shall not be liable in respect of any engagement or contract she may have entered into, or for any wrongful act or omission by her, or for any costs she may incur as plaintiff or defendant: Provided, that where upon any such judicial separation alimony has been decreed or ordered to be paid to the wife, and the same shall not be duly paid by the husband, he shall be liable for necessaries supplied for her use: Provided also, that nothing shall prevent the wife from joining, at any time during such separation, in the exercise of any joint power given to herself and her husband.

Also for purposes of contract and suing.

THE DIVORCE AND MATRIMONIAL CAUSES AMENDMENT ACT.

(21 & 22 VICT. c. 108.)

An Act to amend the Twentieth and Twenty-first Victoria, Chapter Eighty-five. [2nd August, 1858.

7. The provisions contained in this Act, and in the said Act of the twentieth and twenty-first Victoria, chapter eighty-five, respecting the property of a wife who has obtained a decree for judicial separation or an order

Provisions respecting property of

Append.

wife to extend to property vested in her as executrix, &c.

for protection, shall be deemed to extend to property to which such wife has become or shall become entitled as executrix, administratrix, or trustee since the sentence of separation or the commencement of the desertion (as the case may be); and the death of the testator or intestate shall be deemed to be the time when such wife became entitled as executrix or administratrix.

Order for protection of earnings, &c. of wife to be deemed valid.

8. In every case in which a wife shall under this Act or under the said Act of the twentieth and twenty-first Victoria, chapter eighty-five, have obtained an order to protect her earnings or property, or a decree for judicial separation, such order or decree shall, until reversed or discharged, so far as necessary for the protection of any person or corporation who shall deal with the wife, be deemed valid and effectual; and no discharge, variation, or reversal of such order or decree shall prejudice or affect any rights or remedies which any person would have had in case the same had not been so reversed, varied, or discharged in respect of any debts, contracts or acts of the wife incurred, and entered into, or done between the times of the making such order or decree, and of the discharge, variation, or reversal thereof, and property of or to which the wife is possessed or entitled for an estate in remainder or reversion at the date of the desertion or decree (as the case may be) shall be deemed to be included in the protection given by the order or decree.

THE CONVEYANCING AND LAW OF PROPERTY ACT, 1881.

(44 & 45 VICT. c. 41.)

An Act for simplifying and improving the practice of Conveyancing; and for vesting in Trustees, Mortgagees, and others various powers commonly conferred by provisions inserted in Settlements, Mortgages, Wills, and other Instruments; and for amending in various particulars the Law of Property; and for other purposes. [22nd August, 1881.

I.—PRELIMINARY.

1—(2). This Act shall commence and take effect from and immediately after the 31st day of December, 1881.

VIII.—MARRIED WOMEN.

39.—(1.) Notwithstanding that a married woman is restrained from anticipation, the Court may, if it thinks fit, where it appears to the Court to be for her benefit, by judgment or order, with her consent, bind her interest in any property. Power for court to bind interest of married woman.

(2) This section applies only to judgments or orders made after the commencement of this Act.

40.—(1) A married woman, whether an infant or not, shall by virtue of this Act have power, as if she were unmarried and of full age, by deed, to appoint an attorney on her behalf for the purpose of executing any deed or doing any other act which she might herself execute Power of attorney of married woman.

Append.

or do; and the provisions of this Act relating to instruments creating powers of attorney shall apply thereto.

(2) This section applies only to deeds executed after the commencement of this Act.

Conveyance by husband and wife to each other.

50.—(1) Freehold land, or a thing in action, may be conveyed by a person to himself jointly with another person, by the like means by which it might be conveyed by him to another person; and may, in like manner, be conveyed by a husband to his wife, and by a wife to her husband, alone or jointly with another person.

(2) This section applies only to conveyances made after the commencement of this Act.

CONVEYANCING ACT, 1882.

(45 & 46 VICT. c. 39.)

An Act for further improving the Practice of Conveyancing; and for other purposes. [10th August, 1882.

Preliminary.

PRELIMINARY.

Short titles; commencement; extent; interpretation; 44 & 45 Vict. c. 41.

1.—(1.) This Act may be cited as the Conveyancing Act, 1882; and the Conveyancing and Law of Property Act, 1881 (in this Act referred to as the Conveyancing Act of 1881) and this Act may be cited together as the Conveyancing Acts, 1881, 1882.

(2.) This Act, except where it is otherwise expressed, shall commence and take effect from and immediately after the thirty-first day of December one thousand eight

hundred and eighty-two, which time is in this Act referred to as the commencement of this Act. **Append.**

(4.) In this Act and in the Schedule thereto—

(iii.) The Act of the session of the third and fourth years of King William the Fourth (chapter seventy-four) "for the abolition of Fines and Recoveries "and for the substitution of more simple modes of "Assurance" is referred to as the Fines and Recoveries Act; and the Act of the session of the fourth and fifth years of King William the Fourth (chapter ninety-two) "for the abolition of Fines and "Recoveries, and for the substitution of more "simple modes of assurance in Ireland," is referred to as the Fines and Recoveries (Ireland) Act. 3 & 4 Will. 4, c. 74.

MARRIED WOMEN. *Married women.*

Acknowledgment of deeds by married women.

7.—(1.) In section seventy-nine of the Fines and Recoveries Act, and section seventy of the Fines and Recoveries (Ireland) Act, there shall, by virtue of this Act, be substituted for the words "two of the perpetual commissioners, or two special commissioners," the words "one "of the perpetual commissioners, or one special commissioner;" and in section eighty-three of the Fines and Recoveries Act, and section seventy-four of the Fines and Recoveries (Ireland) Act, there shall, by virtue of this Act, be substituted for the word "persons" the word "person," and for the word "commissioners" the words "a commissioner;" and all other provisions of those Acts, and all other enactments having reference in any manner to the sections aforesaid, shall be read and have effect accordingly (*a*).

Append.

(a) The 79th section of the Fines and Recoveries Act will in future therefore read as follows :—

Fines and Recoveries Act.

"Every deed to be executed by a married woman for any purposes of this Act, except such as may be executed by her in the character of protector for the sole purpose of giving her consent to the disposition of a tenant-in-tail, shall, upon her executing the same, or afterwards, be produced and acknowledged by her as her act and deed before a judge of one of the superior courts at Westminster, or a master in chancery, or before one of the perpetual commissioners, or one special commissioner, to be respectively appointed as hereinafter provided."

The main enactment having reference to these sections is Malins' Act, 20 & 21 Vict. c. 57, which enacts as follows :—

Malins' Act, 26 & 27 Vict. c. 57.

"1. After the 31st day of December, 1857, it shall be lawful for every married woman by deed to dispose of every future or reversionary interest, whether vested or contingent, of such married woman, or her husband in her right, in any personal estate whatsoever to which she shall be entitled under any instrument made after the said 31st day of December, 1857 (except such settlement as after mentioned), and also to release or extinguish any power which may be vested in or limited or reserved to her in regard to any such personal estate, as fully and effectually as she could do if she were a *feme sole*, and also to release and extinguish her right or equity to a settlement out of any personal estate to which she or her husband in her right may be entitled in possession under any such instrument as aforesaid, save and except that no such disposition, release, or extinguishment should be valid unless the husband concur in the deed by which the same shall be effected, nor unless the deed be acknowledged by her as hereinafter directed : Provided always, that nothing herein contained shall extend to any reversionary interest to which she shall become entitled by virtue of any deed, will, or instrument, by which she shall be restrained from alienating or affecting the same."

By section 2, the deed disposing of property under section 1, is to be perfected in the same manner as if it were a deed under the Fines and Recoveries Act, and all the provisions of that Act are to apply.

By section 5 the powers given by the Act are not to interfere with any other powers.

By section 4, the Act is not to enable a married woman to dispose of any interest in personal estate settled upon her by her marriage settlement.

7.—(2.) Where the memorandum of acknowledgment by a married woman of a deed purports to be signed by

a person authorized to take the acknowledgment, the deed shall, as regards the execution thereof by the married woman, take effect at the time of acknowledgment, and shall be conclusively taken to have been duly acknowledged.

(3.) A deed acknowledged before or after the commencement of this Act by a married woman, before a judge of the High Court of Justice in England or Ireland, or before a judge of a county court in England, or before a chairman in Ireland, or before a perpetual commissioner or a special commissioner, shall not be impeached or impeachable by reason only that such judge, chairman, or commissioner was interested or concerned either as a party, or as solicitor, or clerk to the solicitor for one of the parties, or otherwise, in the transaction giving occasion for the acknowledgment; and General Rules shall be made for preventing any person interested or concerned as aforesaid from taking an acknowledgment; but no such Rule shall make invalid any acknowledgment; and those Rules shall, as regards England, be deemed Rules of Court within section seventeen of the Appellate Jurisdiction Act, 1876, as altered by section nineteen of the Supreme Court of Judicature Act, 1881, and shall, as regards Ireland, be deemed Rules of Court within the Supreme Court of Judicature Act (Ireland), 1877, and may be made accordingly, for England and Ireland respectively, at any time after the passing of this Act, to take effect on or after the commencement of this Act.

39 & 40 Vict. c. 59. 44 & 45 Vict. c. 68. 40 & 41 Vict. c. 57.

(4.) The enactments described in the Schedule to this Act are hereby repealed (*a*).

(5.) The foregoing provisions of this section, including the repeal therein, apply only to the execution of

Append.

deeds by married women after the commencement of this Act (*b*).

(6.) Notwithstanding the repeal or any other thing in this section, the certificate, if not lodged before the commencement of this Act, of the taking of an acknowledgment by a married woman of a deed executed before the commencement of this Act, with any affidavit relating thereto, shall be lodged, examined, and filed in the like manner and with the like effects and consequences as if this section had not been enacted.

(7.) There shall continue to be kept in the proper office of the Supreme Court of Judicature an index to all certificates of acknowledgments of deeds by married women lodged therein, before or after the commencement of this Act, containing the names of the married women and their husbands, alphabetically arranged, and the dates of the certificates and of the deeds to which they respectively relate, and other particulars found convenient; and every such certificate lodged after the commencement of this Act shall be entered in the index as soon as may be after the certificate is filed.

(8.) An office copy of any such certificate filed before or after the commencement of this Act shall be delivered to any person applying for the same; and every such office copy shall be received as evidence of the acknowledgment of the deed to which the certificate refers.

(*a*) The repeal of part of section 84 and sections 85—88 inclusive, of the Fines and Recoveries Act, abolishes certificates of acknowledgment for the future. Section 7, sub-section (2) of the Conveyancing Act, 1882, supersedes the need of them. The Act 17 & 18 Vict. c. 75, is superseded by section 7, sub-section (3).

(*b*) The Act commences on the 1st of January, 1883.

SCHEDULE. Append.

REPEALS.

3 & 4 Will. 4, c. 74. in part.	The Fines and Recoveries Act, in part; namely,— Section eighty-four, from and including the words "and the same judge," to the end of that section. Sections eighty-five to eighty-eight, inclusive.	Section 7 (4). 162
4 & 5 Will. 4, c. 92. in part.	The Fines and Recoveries (Ireland) Act - - in part; namely,— Section seventy-five, from and including the words "and the same Judge," to the end that section. Sections seventy-six to seventy-nine, inclusive.	
17 & 18 Vict. c. 75.	An Act to remove doubts concerning the due acknowledgments of deeds by married women in certain cases.	
41 & 42 Vict. c. 23.	The Acknowledgment of Deeds by Married Women (Ireland) Act, 1878.	

THE SETTLED LAND ACT, 1882.

(45 & 46 VICT. C. 38.)

An Act for facilitating Sales, Leases, and other dispositions of settled Land, and for promoting the execution of Improvements thereon. [10th August, 1882.

I. PRELIMINARY.

1.—(1). This Act may be cited as the Settled Land Act, 1882.

(2). This Act, except where it is otherwise expressed, shall commence and take effect from and immediately

Append. after the 31st day of December 1882, which time is in this Act referred to as the commencement of this Act.

XIV.—INFANTS; MARRIED WOMEN.

59. Where a person, who is in his own right seised of or entitled in possession to land, is an infant, then for the purposes of this Act the land is settled land, and the infant shall be deemed tenant for life thereof.

60. Where a tenant for life, or a person having the powers of a tenant for life under this Act, is an infant, or an infant would, if he were of full age, be a tenant for life, or have the powers of a tenant for life under this Act, the powers of a tenant for life under this Act may be exercised on his behalf by the trustees of the settlement, and if there are none, then by such person and in such manner as the Court, on the application of a testamentary or other guardian or next friend of the infant, either generally or in a particular instance, orders.

61.—(1). The foregoing provisions of this Act do not apply in the case of a married woman (*a*).

(*a*) This will not, it is submitted, exclude the provisions of sections 59 and 60 in the case of infant married women; for by (4) the provisions of the Act referring to a tenant for life apply to the case of a married woman, and the provisions of sections 59 and 60 refer to an infant tenant for life.

(2) Where a married woman who, if she had not been a married woman, would have been a tenant for life, or would have had the powers of a tenant for life under the foregoing provisions of this Act, is entitled for her separate use, or is entitled under any statute, passed or to be passed, for her separate property, or as a feme sole, then she, without her husband, shall have the powers of a tenant for life under this Act.

(3) Where she is entitled otherwise than as aforesaid, then she and her husband together shall have the powers of a tenant for life under this Act. Append.

(4) The provisions of this Act referring to a tenant for life and a settlement and settled land, shall extend to the married woman without her husband, or to her and her husband together, as the case may require, and to the instrument under which her estate or interest arises, and to the land therein comprised.

(5) The married woman may execute, make, and do all deeds, instruments, and things necessary or proper for giving effect to the provisions of this section.

(6) A restraint on anticipation in the settlement shall not prevent the exercise by her of any power under this Act.

FORMS.

FORM 1. Form I.

(Page 55, above.)

Order for Wife to sue or defend separately on her application. Order XVI. r. 8.

Upon motion, etc. for the defendant *A.*, the wife of the defendant *B.*, who alleged that the defendant *A.* resides in England, but the defendant *B.*, her husband, resides at out of the jurisdiction of this Court [*or* is a person of unsound mind, and by order dated, etc., it was ordered that *C.* should be appointed his guardian by whom he might defend this action, *or* that matters in question in this action arise in right of the said defendant *A.*, and that the said defendant *A.* and the defendant *B.*, her husband, live separately *or* have separate interests in the matters in question in this action *or as the case may be, see* p. 55 *above.*] This Court doth order that the said defendant *A.* be at liberty to defend this action separately from her husband, the defendant *B.* [*if security for costs is required, see Noel* v. *Noel* (13 C. D. 510), *and* p. 53 *above; add* upon procuring some sufficient

Append. Form I. person on her behalf to give security according to the course of the Court by bond to the Clerk of Records and Writs in the penalty of £—— conditioned to answer costs in case any costs shall be awarded to be paid by her.

NOTE.—This order may be made on motion or summons. It is submitted that, where the creditor or the husband joins the wife as plaintiff or defendant, she can still obtain leave under Order XVI. r. 8, to sue or defend separately from her husband. For the reasons for which leave has been given, see above p. 55. If the application is to sue, substitute plaintiff for defendant throughout.

Form II.

FORM 2.

(See above, pp. 57, 75.)

Transfer and Payment to the Husband where Property is outside the Acts, or where the Wife waives her right and there is no Settlement.

Upon hearing, etc., and upon reading an affidavit of the plaintiffs [*or* defendants], *A.* and *B.*, his wife, filed the—— day of —— of no settlement [*enter any other evidence*], and the certificate of the fund. And the plaintiff [*or* defendant] *B.*, the wife of the plaintiff [*or* defendant] *A.* [*add if the property is not separate property* being present in Court and examined and consenting and] desiring that the £—— Cons. £3 per Cent. Annuities, and the £—— cash hereinafter mentioned should be transferred and paid to the said *A.*, her husband. Let the £—— Cons. £3 per Cent. Annuities, and the £—— cash in Court to the credit of, etc., be transferred and paid to the plaintiff [*or* defendant] *A.* [*if not separate property* in right of his said wife].

NOTE.—The married woman could waive her right to separate property coming to her under the Act of 1870 by petition with her husband, and can do so now as to property coming to her under the Acts of 1870-82, *Lane* v. *Oakes*, 22 W. R. 709; 30 L. T. 726, above, p. 75. She is not separately examined in such a case, cases collected above, pp. 56–57.

Form III.

FORM 3.

(See above, p. 84.)

Transfer of Married Woman's Fund into her own name under Act of 1870 *or Act of* 1882.

And the judge being of opinion that under the Act intituled "The Married Women's Property Act, 1870 [*or* 1882]" the £——

Cons. £3 per Cent. Annuities hereinafter mentioned may be transferred as hereinafter directed without the examination of *E.* or waiver of a settlement. Let out of £—— one moiety of the £—— cash in Court to the credit of, etc. £——, the amount of the ascertained costs of this application and consequent thereon be paid to Mr. J., the applicant's solicitor. And let £—— Cons. £3 per Cent. Annuities, being a moiety of the £—— like Annuities in Court to the same credit, and £——, the residue of the said £—— cash, be respectively transferred and paid to the said *E.*, the wife of *A.*, as to the said £—— cash for her separate use. *Brown* v. *Gellatly*, M. R. at Chambers, 25th January, 1872, A. 169, Seton, p. 662.

NOTE.—*In Re Bartholomew* (W. N. (1870) 234; 19 W. R. 95), above, p. 84, the application was by petition of husband and wife, but under the Act of 1882 the wife can petition alone, sec. 1 (2).

FORM 4.

(See above, pp. 66, 74, 75.)

Transfer and Payment to the Wife on her separate receipt; where Property comes to her under the Act of 1882, *or sec.* 7 *and* 8 *of Act* 1870; *where existing Settlement does not affect the Fund.*

Upon hearing, etc., and upon reading the affidavit of *A.* and *B.*, his wife [*or* of *B.*, the wife of *A.*], filed, etc., of no settlement or agreement for a settlement except the indenture of settlement [*or* agreement for a settlement] dated, etc., made between, etc., being the exhibit marked X in the said affidavit referred to [*enter any other evidence*], and the certificate of the fund. And the Court being of opinion that the sum of £—— cash [*or* Cons. £3 per Cent. Annuities] hereinafter mentioned is the separate property of the said *B.* under the provisions of the Married Women's Property Act, 1882 [*or* is property belonging to the said *B.* for her separate use under the provisions of the Married Women's Property Act, 1870], and being satisfied that such sum is [*or* such Annuities are] not, nor is any part thereof subject to the trust of the said indenture [*or* agreement], or in any manner comprised in or affected thereby. Let the sum of £—— cash [*or* £—— Cons. £3 per Cent. Annuities] be paid to the said *B.*, the wife of *A.*, as her separate property [*or if under the Act of* 1870 for her separate use, *or* Let the £—— Cons. £3 per Cent. Annuities in Court to the credit of this cause be sold: And let the money to arise by such sale and £—— cash in Court to the same credit and any dividends, etc. be paid to the said *B.*, the wife of *A.*, for her separate use.]

Append.

Form V.

FORM 5.

Order for Transfer to a Married Woman, who had obtained a Protection Order, of Reversionary Interest which had fallen into possession since her desertion; or under the Married Women's Property Acts, 1870–82.

Upon petition, etc., And this Court being of opinion that the petitioner is absolutely entitled to the funds hereinafter mentioned as if she were a *feme sole*. Let £—— Cons. £3 per Cent. Annuities in Court to the credit of, etc. be carried over to the credit of the said matter, "The separate property of *C. E.*, the wife of *J. E.*, as if she were a *feme sole*." Direction to pay dividends to her on her separate receipt. *Re Whittingham's Trusts*, V. C. W., 12 W. R. 775, Seton 664.

NOTE.—The like Order might be made in the case of a woman entitled to separate property under the Act of 1870, sec. 7. 8, or the Act of 1882, sec. 2, 5, substituting for the words "as if she were a feme sole" in the former the words "for her separate use," and in the latter "as her separate property." As to reversionary interests to which a married woman was entitled before the Act of 1882, fallen into possession afterwards, see p. 76.

Form VI.

FORM 6.

(See pp. 92, 94, above.)

Appointment of a Trustee to receive Policy Moneys under Married Women's Property Acts 1870, s. 10; *or* 1882 s. 11, *where there is no Trustee of such Policy at the time of the death of the Insured.*

Upon the application [*or* petition] of *J. T.* widow, etc. [*or A. B. husband*]. Appoint *H.* of——, a trustee for the purpose of receiving from the *E.*, etc. Assurance Society the sum of £——, secured by the policy of assurance effected in that office on the life of *S. T.* dated, etc. and numbered ——, and purporting to be effected for the benefit of the said *J. T.* [*or A. B.* or children] under the provisions of the above-mentioned Act [*if under the Act of* 1882, *the application should be in the matter of the Trustee Act as well as the Act of* 1882], such sum to be held by the said *H.* in trust for the said *J. T.* absolutely: *Re Turner*, V. C. B. at Chambers, 14th September, 1875, B. 1592. Seton, p. 663. [*If there are trusts other than an absolute trust for the husband or wife add them as*, to be held by the said *H.* Upon trust to pay thereout the costs, to be taxed as between solicitor and client, of and incident

to this application and to invest the residue in securities authorised by the Court (to include India 4 Per Cents.), and to pay the income to the said *widow* for her life for her separate use without power of anticipation, with remainder (as to both capital and income) for *the two children* on attaining twenty-one, or marriage under that age, in equal shares, and if but one, the whole to that one, with remainder (as to both capital and income), if neither of them the said *children* attain twenty-one, or marry under that age, for the said *widow* absolutely. *In Re Mellor's Policy Trusts* (6 *C. D.* at p. 129.) *If the Policy was effected under the Act of* 1882 *add*, And let the right to sue for the said sum of £—— secured as aforesaid or any interest in respect thereof vest in the said *H.* to be held by him on the trusts aforesaid.]

NOTE.—The policy in case there is no trustee at the death of the insured vests in his legal personal representative, under section 11 of the Act of 1882, see p. 92, above.

FORM 7.

(See above, pp. 92-94.)

Appointing New Trustees of a Policy under sec. 11 *of the Act of* 1882 *and the Trustee Acts.*

This Court, etc., doth hereby appoint *A.*, of, etc., and *B.*, of, etc., trustees of the policy of assurance [*or* of the moneys arising from the policy of assurance] effected with the E. Assurance Co. on the life of *S. T.*, dated, etc., and numbered—and purporting to be effected for the benefit of, etc., *wife and children, or husband, or children, as the case may be, see Form* 6, *above* [*or* of the memorandum under the hand of *S. T.*, dated, etc., relating to a policy of assurance, etc.], in addition to *C.*, the continuing trustee [*or* in substitution for *D.*, *the trustee retiring, deceased, or under disability*]. And let the right to sue for, or recover the sum of £——, secured by said policy of assurance or any interest in respect thereof vest in the said *A. B.* [and *C.*] *or if the policy moneys have been got in by the former trustees and invested*, and let the said *C.* assign [*or* transfer] the funds [property and securities], in which the moneys arising from the said policy of assurance are invested, and vested in him by the said policy [*or* memorandum], so as to vest the same in the said *A.* and *B.*, [*if so* jointly with the said *C.*,] upon the trusts aforesaid.

Append. after the 31st day of December 1882, which time is in this Act referred to as the commencement of this Act.

XIV.—INFANTS; MARRIED WOMEN.

59. Where a person, who is in his own right seised of or entitled in possession to land, is an infant, then for the purposes of this Act the land is settled land, and the infant shall be deemed tenant for life thereof.

60. Where a tenant for life, or a person having the powers of a tenant for life under this Act, is an infant, or an infant would, if he were of full age, be a tenant for life, or have the powers of a tenant for life under this Act, the powers of a tenant for life under this Act may be exercised on his behalf by the trustees of the settlement, and if there are none, then by such person and in such manner as the Court, on the application of a testamentary or other guardian or next friend of the infant, either generally or in a particular instance, orders.

61.—(1). The foregoing provisions of this Act do not apply in the case of a married woman (*a*).

(*a*) This will not, it is submitted, exclude the provisions of sections 59 and 60 in the case of infant married women; for by (4) the provisions of the Act referring to a tenant for life apply to the case of a married woman, and the provisions of sections 59 and 60 refer to an infant tenant for life.

(2) Where a married woman who, if she had not been a married woman, would have been a tenant for life, or would have had the powers of a tenant for life under the foregoing provisions of this Act, is entitled for her separate use, or is entitled under any statute, passed or to be passed, for her separate property, or as a feme sole, then she, without her husband, shall have the powers of a tenant for life under this Act.

(3) Where she is entitled otherwise than as aforesaid, then she and her husband together shall have the powers of a tenant for life under this Act. **Append.**

(4) The provisions of this Act referring to a tenant for life and a settlement and settled land, shall extend to the married woman without her husband, or to her and her husband together, as the case may require, and to the instrument under which her estate or interest arises, and to the land therein comprised.

(5) The married woman may execute, make, and do all deeds, instruments, and things necessary or proper for giving effect to the provisions of this section.

(6) A restraint on anticipation in the settlement shall not prevent the exercise by her of any power under this Act.

FORMS.

FORM 1. **Form I.**

(Page 55, above.)

Order for Wife to sue or defend separately on her application. Order XVI. r. 8.

Upon motion, etc. for the defendant *A.*, the wife of the defendant *B.*, who alleged that the defendant *A.* resides in England, but the defendant *B.*, her husband, resides at out of the jurisdiction of this Court [*or* is a person of unsound mind, and by order dated, etc., it was ordered that *C.* should be appointed his guardian by whom he might defend this action, *or* that matters in question in this action arise in right of the said defendant *A.*, and that the said defendant *A.* and the defendant *B.*, her husband, live separately *or* have separate interests in the matters in question in this action *or as the case may be, see* p. 55 *above.*] This Court doth order that the said defendant *A.* be at liberty to defend this action separately from her husband, the defendant *B.* [*if security for costs is required, see Noel* v. *Noel* (13 C. D. 510), *and* p. 53 *above; add* upon procuring some sufficient

Append. after the 31st day of December 1882, which time is in this Act referred to as the commencement of this Act.

XIV.—INFANTS; MARRIED WOMEN.

59. Where a person, who is in his own right seised of or entitled in possession to land, is an infant, then for the purposes of this Act the land is settled land, and the infant shall be deemed tenant for life thereof.

60. Where a tenant for life, or a person having the powers of a tenant for life under this Act, is an infant, or an infant would, if he were of full age, be a tenant for life, or have the powers of a tenant for life under this Act, the powers of a tenant for life under this Act may be exercised on his behalf by the trustees of the settlement, and if there are none, then by such person and in such manner as the Court, on the application of a testamentary or other guardian or next friend of the infant, either generally or in a particular instance, orders.

61.—(1). The foregoing provisions of this Act do not apply in the case of a married woman (*a*).

(*a*) This will not, it is submitted, exclude the provisions of sections 59 and 60 in the case of infant married women; for by (4) the provisions of the Act referring to a tenant for life apply to the case of a married woman, and the provisions of sections 59 and 60 refer to an infant tenant for life.

(2) Where a married woman who, if she had not been a married woman, would have been a tenant for life, or would have had the powers of a tenant for life under the foregoing provisions of this Act, is entitled for her separate use, or is entitled under any statute, passed or to be passed, for her separate property, or as a feme sole, then she, without her husband, shall have the powers of a tenant for life under this Act.

(3) Where she is entitled otherwise than as aforesaid, then she and her husband together shall have the powers of a tenant for life under this Act. **Append.**

(4) The provisions of this Act referring to a tenant for life and a settlement and settled land, shall extend to the married woman without her husband, or to her and her husband together, as the case may require, and to the instrument under which her estate or interest arises, and to the land therein comprised.

(5) The married woman may execute, make, and do all deeds, instruments, and things necessary or proper for giving effect to the provisions of this section.

(6) A restraint on anticipation in the settlement shall not prevent the exercise by her of any power under this Act.

FORMS.

FORM 1. **Form I.**

(Page 55, above.)

Order for Wife to sue or defend separately on her application. Order XVI. r. 8.

Upon motion, etc. for the defendant *A.*, the wife of the defendant *B.*, who alleged that the defendant *A.* resides in England, but the defendant *B.*, her husband, resides at out of the jurisdiction of this Court [*or* is a person of unsound mind, and by order dated, etc., it was ordered that *C.* should be appointed his guardian by whom he might defend this action, *or* that matters in question in this action arise in right of the said defendant *A.*, and that the said defendant *A.* and the defendant *B.*, her husband, live separately *or* have separate interests in the matters in question in this action *or as the case may be, see* p. 55 *above.*] This Court doth order that the said defendant *A.* be at liberty to defend this action separately from her husband, the defendant *B.* [*if security for costs is required, see Noel* v. *Noel* (13 C. D. 510), *and* p. 53 *above; add* upon procuring some sufficient

Append. Prec. I. several promissory note of the defendants made to the plaintiff dated, etc., and the costs of this action, and as against both defendants, the plaintiff claims to have it declared that the separate property vested in the female defendant, or in any person in trust for her [*if the note was given before the commencement of the Act add* at the date of such promissory note; *note to sect.* 1 (4)], is chargeable with the payment of the principal and arrears of interest due, and to become due upon the said promissory note and the costs of this action, and that all such accounts, inquiries and directions may be taken, made and given as may be necessary or proper for enforcing such charge and obtaining payment out of such separate property of the aforesaid principal, interest and costs.

NOTE.—In *Mercier* v. *Williams* (9 Q. B. D. 337, 339), it was held that it was not necessary or proper to join the husband in an action to charge the separate property of the wife only, under section 12, of the Act of 1870; and of course it will not be proper to do so under the Act of 1882. The separate property of the married woman as to which she is restrained from anticipation cannot be charged even after discoverture. *Pike* v. *Fitzgibbon* (17 C. D. 454).

Prec. II. II.—*Statement of Claim in an action to charge Husband and Wife with the ante-nuptial liabilities of the Wife, notwithstanding a Restraint on Anticipation. Variations where Judgment has been previously entered in favour of the Husband.*

In the High Court of Justice,
Division.
V.-C. [*or* Mr. Justice] .
Writ issued the of , 18 .

Between *C.* . . . . . Plaintiff,

and

D. B. and *A. B.*, his wife [and *G. H.* and *I. K.*, *trustees*] . . Defendants.

STATEMENT OF CLAIM.

1. Previously to her marriage with the defendant *D. B.*, the defendant *A. B.* (then *A. K.*, spinster) executed four joint and several promissory notes, dated, etc., in favour of the plaintiff for the sums of £——, £——, £——, and £—— respectively, amounting in the whole to £——, and payable at three, six, nine and twelve months after date respectively.

NOTE.—If judgment has been found in favour of the husband

2. In the month of April, 18—, the defendant *D. B.* intermarried with the defendant *A. B.*, and by an indenture executed previously to such marriage, dated [*state the ante-nuptial settlement assigning* £10,000 *belonging to A. B., to the defendants G. H. and I. K. upon trust to pay the income to A. B. for life, for her separate use without power of anticipation, etc.; and also assigning furniture, china, etc., to the trustees for her separate use absolutely.*

If there has been a previous action against husband and wife, as in London and Provincial Bank v. *Bogle*, 7 C. D. 773, *add* 3. In the month of March, 18—, the amounts due to the plaintiff as aforesaid on the said promissory notes being still unpaid, the plaintiff commenced an action in the Queen's Bench Division against the defendants *D. B.* and *A. B.*, his wife, to enforce payment of the said principal and interest due to the plaintiff as aforesaid on the said promissory notes. In such action the defendant *D. B.* pleaded the Married Women's Property Act, 1882 (or 1874), in his defence, alleging that he had not at the time of the said marriage with the defendant *A. B.*, nor at any time after such marriage acquired, or became entitled to, from or through the defendant *A. B.*, his wife, any property whatsoever at the time of her marriage with him, or at any time after such marriage, belonging to the last-named defendant, *or under the Act of* 1874, "alleging that he had never received any assets in respect of which he was liable under the said Act." 4. The said action came on for trial at the —— assizes, and judgment was in such action entered for the defendant *D. B.* with costs, but against the defendant *A. B.* for the sum of £——, the amount due to the plaintiff as aforesaid for principal and interest, and £—— for costs. The plaintiff has paid to the defendant *D. B.* his costs of the said action.]

5. The plaintiff is informed and believes that the defendant *D. B.* acquired or became entitled to, at the time of such marriage, or at some time thereafter, from or through his said wife, the defendant *A. B.*, considerable real and personal property. [*If the husband is within the Act of* 1874 *it is not necessary to allege that he has received any assets. Matthews* v. *Whittle*, 13 C. D. 811, *and see note to section* 14 *above, p.* 106. *If judgment has been entered in favour of the husband, leave out paragraph* 5.]

6. The plaintiff is informed and believes that the separate property included in the said indenture dated, etc., is the only separate property now vested in the defendant *A. B.*, or any person in trust for her. The plaintiff has applied to the defendant (*D. B.* and) *A. B.*, and also to the defendants *G. H.* and *I. K.*, for payment of the said principal moneys and interest

---

he must not be joined. *Mercer* v. *Williams*, 9 Q. B. D. 337–339; and see note Precedent I. above.

Append. (and costs) due to him as aforesaid under the said judgment, but they have refused, and continue to refuse payment of such
Prec. II. principal moneys and interest [and costs], or any part of them, and same remain now due and owing.

The plaintiff claims:—

1. That it may be declared that any separate property vested in the defendant *A. B.*, the wife of the defendant *D. B.*, or in the defendants *G. H.* and *I. K.*, or any other person, in trust for her, including any property as to which she may be restrained from anticipation, is, notwithstanding such restraint, chargeable with the principal moneys and interest due to the plaintiff as aforesaid, and the plaintiff's costs [in the said action, including the costs of the defendant *D. B.* in the said action, and also with the plaintiff's costs] of this action.
2. As against the defendant *D. B.* that it may be declared that all such property as the defendant *D. B.*, at the time of his said marriage, or at any time thereafter, shall have acquired or become entitled to from or through the defendant *A. B.*, his wife (after deducting therefrom any payments made by the defendant *D. B.*, and any sums for which judgment may have been *bonâ fide* recovered against him in any proceeding at law, in respect of any debts, contracts, or wrongs for or in respect of which the defendant *A. B.* was liable before her marriage with the defendant *D. B.*), is chargeable with the payment of the principal moneys and interest so due to the plaintiff as aforesaid, and the costs of this action.
3. That for the purposes aforesaid all such accounts may be taken, inquiries made, and directions given as may be necessary or proper for enforcing such charges (charge) and obtaining payment out of such property of the aforesaid principal and interest and costs.
4. Such further and other relief in the premises as the nature of the case or the circumstances may require.

NOTE.—If the husband is liable under the Act of 1874, it is not necessary to allege that he has received any assets (*Matthews* v. *Whittle*, 13 C. D. 811), and instead of 2 substitute the following:

2. As against the defendant D. B., payment of the principal and interest due to the plaintiff as aforesaid, and the costs of this action. If judgment has been entered in favour of the husband leave out 2.

III.—*Statement of Claim of Wife a Separate Trader in an action for an injunction against her husband.*

In the High Court of Justice,
Chancery Division,
V. C. [or Mr. Justice] .
Writ issued the day of 18 ,
Between *M. A. W.* . . . . Plaintiff,
and
R. W. . . . . Defendant.

STATEMENT OF CLAIM.

1. The plaintiff, who is a married woman, suing without a next friend as a feme sole by virtue of the provisions contained in the Married Women's Property Act, 1882, was married to the defendant on the of 188 . The plaintiff before and after her said marriage has carried on the business of a private hotel-keeper at No. , with considerable profit to herself. Since the said marriage, however, unhappy differences have arisen between the plaintiff and defendant. The defendant has been guilty of various acts of adultery against the plaintiff, and has been frequently absent from her for long periods at a time.

2. By an indenture dated, etc. [*state deed executed by husband settling certain leasehold property including the said hotel and business on the defendant* "to the end and intent that she might in the said leasehold premises carry on the business and occupation of a private hotel-keeper in the same manner as if she were a feme sole," *she paying the rents, etc.*]

3. After the execution of the said Indenture of Settlement the defendant disappeared, and the plaintiff did not see him or know of his place of abode for the space of six months or thereabouts. On the of , 18 , the defendant came to the said private hotel in street, and insisted on occupying what rooms he pleased, and generally acted as if he had full rights of ownership in the said private hotel and property, to the great annoyance of the visitors at the said hotel, and to the injury of the plaintiff's business.

4. The plaintiff has repeatedly applied to the defendant to desist from annoying the visitors at the said hotel, and to cease from interfering in any way with her said separate business. But the defendant continues so to do, and the plaintiff is therefore compelled to apply to this Honourable Court.

The plaintiff claims :—

1. That the defendant may be restrained by order and injunction of this Honourable Court from in any way interfering with the conduct of the said business, and from continuing in possession of the said private hotel and premises or any part thereof.

Append.

Prec. III.

2. That the plaintiff do pay the costs of this action.
3. Such further and other relief in the premises as the nature of the case or the circumstances may require.

NOTE.—See *Wood* v. *Wood*, 19 W. R. 1049. As to husband and wife suing each other otherwise than by application under section 17, see p. 117. In such a simple case as this, an application under section 17 would be all that would be required, see Precedent IV.

Prec. IV.

IV.—*Notice of Motion or Summons for the decision of a question as to Property under Act of* 1882, *sec.* 17 (*Act of* 1870, *sec.* 9.)

In the High Court of Justice,
Chancery Division,
V. C. [or Mr. Justice]

In the matter of *A. B.*, the wife of *C. B.*, and in the matter of the Married Women's Property Act, 1882 [1870].

Take notice that this Honourable Court will be moved before his lordship, V. C. [*or* Mr. Justice], on Thursday, the day of , 18 , at [*state time if any time is specially appointed*] by Mr. *A.*, as counsel on the part of the above named *A. B.*, the wife of the above-named *C. B.* of . *If the application is by summons say*, Let all parties concerned attend at my chambers in the Rolls Yard, Chancery Lane, Middlesex, (*or as the case may be*), on Thursday, the day of , 18 , at of the clock in the noon on the hearing of an application, that it may be declared that the property bequeathed to the said *A. B.* by the will of *G. H.*, late of, etc., and dated, etc., belongs [*If the husband makes the application*, does not belong, *if the Bank, etc. makes the application say;* declared whether the *investments describing them* belong to the said *C. B.* or] to the said *A. B.* as her separate property within the meaning of the above-named Act. And that all proper consequential directions may be given.

Date, etc.

INDEX.

ACKNOWLEDGMENT,
of deed by married woman, 8, 17, 43, 47
contract with husband renders unnecessary, 43
trust property, 47
unnecessary under Act of 1882, 43
under Fines and Recoveries Act, 158, 160
Malins' Act, 160
Conveyancing Act, 1882, 158

ACQUIESCENCE
of husband in separate business, 9, 65, 77
of wife in husband receiving income of separate estate, 120

ACT OF 1882,
changes effected by, 1

ACTION,
by and against married woman, 51
can bring in her own name, 54
See PRACTICE.

ADMINISTRATION,
creditors take independent action, 29
cum testamento annexo, 40
granted to husband, 37
next of kin, 37
goes with the interest, 38, 41
of separate property in the ordinary course, 40, App. Form XII.
to married woman, 37—41

ADMINISTRATOR,
husband is to wife of right, 37
liable on discoverture for wife's liabilities, 138
only if he intermeddles where, 138
See HUSBAND.

ADMINISTRATRIX,
married woman, 123
husband's consent necessary, 123
but not joint administrator, 123

ADVANCEMENT,
to wife, distinguished from gift to her separate use (*Re Eykyn*), 80

AFTER-ACQUIRED PROPERTY,
married woman not liable on, before the Act of 1882, 29
could not bind during coverture, 102
since the Act, 62
bound for torts as well as contracts, 30, 50, 63
unless there is a restraint on anticipation, 50, 63
covenant before marriage bound, 102

AGENT,
married woman bound by, 22
for her husband under 28 & 29 Vict. c. 86, 72
for necessaries when, 61
position of, under Act of 1882, sec. 17, 123

ALIENATION,
of investment by married woman, 80—87
of real property before the Act of 1882, 6—21
of separate property, 16, 18, 42, 80—87
to husband, 120
by will, 18
under Act of 1882, 42

ALLOWANCE,
to wife whether separate estate, 12, 120

ANTE-NUPTIAL LIABILITIES. *See* LIABILITIES.

ANTICIPATION. *See* RESTRAINT.

APPEAL,
under Act of 1882, sec. 17, final or interlocutory, 121

APPOINTMENT,
of trustees of policy, 92, 94, App. Forms VI., VII.
See POWER.

ARREARS
of rent belong to administrator, 37
separate income, how much can be claimed (*Dixon* v. *Dixon*), 120

ARREST. *See* COMMITTAL.

ASSETS,
loan by wife to husband, in bankruptcy, 70
property appointed is under Act, 72
before, 30
separate property, what is, 48, 49
not where there is a restraint, 50, 63

ASSURANCE. *See* POLICY.

ATTACHMENT,
married woman against, 33, 113, 114
where treated as a feme sole, 56

ATTORNEY,
power of, could not be given by married woman, 22
under Conveyancing Act, 1881, 22, 157

BAILEE,
the position of, under Act of 1882, s. 17, 123

BANK,
79, 83, 85, 87
application to under Act of 1870, 80, 84
may apply under Act of 1882, s. 17, 116
can it be brought before the court under, 118
not liable for investments, 79
See INVESTMENTS.

BANKRUPTCY,
by custom of London, 28, 64
married woman postponed in her husband's, 70
liable to or not, 27, 48, 64
separate trader liable to, 28, 64
wife of a convict liable to, 27, 64

BANKRUPTCY ACT, 1869,
91, 93, 130, 131

BARE TRUSTEE,
what; view of V.-C. Hall and M. R., 47
under Vendor and Purchaser Act may convey, 47

BILL OF EXCHANGE,
binds separate property, 24

BOND,
binds separate property, 24

BREACH OF TRUST,
husband liable for, 35
since the Act not unless he intermeddles, 137
married woman not liable for before Act, 35
committing, 35, 51, 137
included in contract, 137
under the same settlement, 36
under the Act of 1882, 63, 137

BUSINESS, SEPARATE. *See* TRADE, SEPARATE.

CAMERA,
hearing in when, 118

CERTIORARI,
removal of application from County Court by, 116
when of right, 123

CHATTELS,
personal. *See* PERSONALTY.
real. *See* LEASEHOLDS.

CHILDREN,
husband liable for, 134
married woman liable for, 133, 134
maintenance for, presumptively entitled, 135
policies on trust for, 91, 93

CHOSE IN ACTION,
husband's interest in, 5, 77
do not devolve on married woman till reduced into possession, 66, 76
property includes, under Act of 1882, 66, 75, 137, 139
under 20 & 21 Vict. c. 85, 68, 76
Act of 1882, sec. 2, 68, 69
sec. 5, 76
survive to wife, 5

COMMENCEMENT,
of an Act, 104, 112, 140
of Act of 1870, 103, 141, 149
of Act of 1874, 111, 150
of Act of 1882, 140

COMMITTAL,
married woman of, 33, 114
where treated as a feme sole, 56

COMMUNICATIONS
between husband and wife privileged, when, 98

COMPANIES ACT, 1862,
85, 98, 104, 107
liability under not affected by the Act of 1874, 85, 107
query as to Act of 1882, 85, 107
married women liable for their antenuptial debts under, 98
husband liable, 85, 104, 107

COMPANY,
79, 83, 85, 87
application to under Act of 1870, 80
altering its rules to exclude married women, 85
may apply under Act of 1882, s. 17, 115
whether it can be brought before the Court under, 118
not liable for investments, 79
See INVESTMENTS.

CONSENT,
of husband to wife proving, 125
would not be intermeddling, 139

CONTRACT,
married woman can, 21 *seq.*, 50
applies to trust, &c., 60, 63, 137
liability of separate property on, 24, 28
not after acquired before the Act of 1882, 29
married woman could before the Acts, 21, 22, 23
married woman's with her husband, 22
intention to, on faith of separate property, 25, 60
power to not increased by Act of 1870, 50, 84
personal liability on, 27, 48, 51, 58
presumed to refer to separate property, 60
not when husband is liable, 61
separate property will bind what, 49, 63
property acquired on discoverture, 49
before the Act, 29
made assets by execution of power, 30, 72
not where restraint on anticipation, 50
not after acquired before the Act, 29, 63
for investments, 80, 81, 84
cannot where company forbids, 83, 85
husband liability on,
See HUSBAND, LIABILITY.
antenuptial under Act of 1870, 32, 99
under Act of 1882, 33, 101
before Acts on husband's bankruptcy, 32, 99, 103
See LIABILITY.

CONTRACT—*continued.*
liability of married woman in dispute, 24
Statutes of Limitation do not apply to, 31, 58, 100, 136
query under Act of 1882, 32, 58
antenuptial, 101
specific performance enforced against married woman, 22
in her favour, 22

CONVEYANCE,
between husband and wife, 8, 44, 158

CONVEYANCING ACTS,
1881, 8, 22, 44, 94, 128, 157
1882, 14, 17, 47, 76, 158

CONVICT,
wife of may be made bankrupt, 27, 64

COPYHOLDS,
descending under Act of 1870, sec. 8, 74, 146

CORPORATION.
See COMPANY.

COSTS,
enforced against separate property, 59, 60
husband's under Act of 1874, a charge on separate estate, 100, 113
under Act of 1882, sec. 15, 113
if formal party, 54
stakeholder's, 123
under sec. 17, 116, 123

COUNTY COURT,
appeal from, 116, 123
jurisdiction of how limited, 122
practice in, under M. W. P. Acts, 121
removal from, of right, 116, 123

COUNTY COURT ACTS,
9 & 10 Vict. c. 95, 122, 123
13 & 14 Vict. c. 61, 122
28 & 29 Vict. c. 99, 122
30 & 31 Vict. c. 142, 122

COURT
may discharge restraint, 128, 157
removal of application under Act of 1882, sec. 17, 116, 123
payment out of, 56, 75, 133, App. Forms II.—V.

COVENANT,
married woman could not bind after-acquired property, 23, 29
to settle after-acquired property, 74, 127
"otherwise settled," 127
will take the property out of the Act, 127
married woman's election as to, 23, 127

CREDITORS.
administration action, 29
antenuptial. *See* LIABILITY.
fraud on, 89, 90, 105, 131
marriage a fraud on, 90, 105
of husband, rights against separate property, 78, 90
husband can prefer wife's, 111
of married woman rank *pari passu*, 29
settlements void against, 130
rank before legatees, 29
remedy in equity against separate estate, 28

CRIMINAL PROCEEDINGS
by husband against wife, 3, 114
by wife against husband, 96, 98
third parties, 95, 96

CURTESY,
husband's in separate property, 17, 36, 40
right to, lost by disposition of wife, 17
on intestacy, 36
contrasted with dower, 40

CUSTOM OF LONDON,
married woman trading by, 28, 64
liable to bankruptcy, 28, 64

DAMAGES
to wife, separate property, 48, 49
against, to come out of separate property, 48

DEBTORS ACT, 1869,
married woman within, 114

DEBTS,
antenuptial do not include breaches of contract, 101, 103, 105, 111, 130
See CREDITORS; HUSBAND; LIABILITIES.

DECREE,
forms of. *See* FORMS; TABLE OF CONTENTS; CREDITOR; LIABILITY; SEPARATE PROPERTY.

DESERTION,
authority of wife for necessaries on, 60, 61
money paid out of court on, 12
protection order on. *See* PROTECTION ORDER.
savings on, 12
separate business on, 12

DEVASTAVITS
by husband ; wife not liable when, 138
by wife; husband only liable during coverture, 139
not liable when, 125, 138
liable as administrator when, 139
though living apart, 139
wife liable for, under Act, 63, 137, 138, 139
after discoverture, 59, 138

DISCHARGE
by married woman trustee, 46, 124
to insurance office by trustee or l. p. r., 92, 95
by payment into court, 95

DISCOVERTURE,
effect on liability, 106, 107, 138, 139
antenuptial, 106, 107
devastavits, 138, 139
restraint on anticipation, 50
torts, husband's liability on, 58, 139
wife's liability on, 59, 138
property acquired on, whether liable, 49, 59, 138

DISPOSITION.
See ALIENATION.

DIVORCE,
expenses of, necessaries, 61, 62

DIVORCE ACTS.
App. 153, 155
See STATUTES 20 & 21 Vict. c. 85 ; 21 & 22 Vict. c. 108 ; PROTECTION ORDER.

EARNINGS
of married woman under Act of 1870, 12, 69, 77, 141
Act of 1882, 12, 66, 69, 73, 77
include capital, 77
wife could sue for alone under Act of 1870, 53, 148

ELECTION
by married woman binding, 23, 127
cannot bind after-acquired property, 23
none where restraint, 23

EMPLOYMENT
must be lawful, 66
See TRADE; EARNINGS.

ENGAGEMENTS
binding on separate estate, when, 24
on faith of separate estate, when presumed, 25, 60
under Act, 60
history of, 24
See CONTRACT.

ENTITLED
means entitled in possession under Act of 1870, 74

EQUITY, COURTS OF,
could not discharge restraint, 128
doctrine of separate use arose in, 5
restraint on anticipation arose in, 127
husband considered trustee in, 4, 6, 16

EQUITY TO A SETTLEMENT,
when it arises, 9
binding on husband's creditors, 10
wife can waive, 10
subject to antenuptial debts, 10
wife's fraud, 10
how much of the property included in, 10
husband's interest, 10
obsolete under Act of 1882, 11, 69, 77

EVIDENCE,
between husband and wife in criminal proceedings, 97
of gift to wife's separate use, 9, 80, 90
See ONUS.

EXAMINATION
of married woman under Fines and Recoveries Act.
See FINES AND RECOVERIES.
on payment out of court, 56

EXECUTOR,
of married woman, 40, 136
do not take *jure representationis* under a power, 41
to stand in her place where, 137
under sec. 17, 117

EXECUTRIX, MARRIED WOMAN,
liable for husband's devastavit, 138
cannot be without husband's consent, 125
husband's liability for, 125, 138, 139
as administrator, 139
under Act of 1882, 60, 63, 124, 137

FEE SIMPLE. *See* REAL ESTATE; LEGAL INTEREST.

FEME COVERT. *See* MARRIED WOMAN.

FEME SOLE,
can deal with separate property, 7, 67
destroying trust for separate use, 6, 7, 67, 75, 142
See SEPARATE PROPERTY.

FINES AND RECOVERIES ACT,
amended by Conveyancing Act, 1882, 14, 158, 160
legal estate must be conveyed by, 16
query under Act of 1882, 14, 43
equitable estate, except when contract with husband, 8, 17
or held to separate use, 16, 43
trust estates, 47
See STATUTES, 3 & 4 W. IV. c. 74

FORMS (APPEND.),
administration of separate property, XII.
costs, providing for husband's, X., XI.
trustees, XI.
charging against separate estate, VIII., IX., X., XI.
separate property, charging, VIII., IX., X., XI.
including after-acquired, VIII.
excluding, VIII., IX.
notwithstanding restraint, XI.
settlement, none, II.
none affecting property, IV.
transfer out of court to husband, II.
to married woman, IV.
into name of, III.
reversionary, interest of, V.
trustees, appointment of, VI.
new, VIII.
order without prejudice to, X.
See PRECEDENTS; TABLE OF CONTENTS.

FRAUD,
creditors, on, 90, 105, 130, 131
effect of, to bind separate property, 34, 35, 59
under Act of 1882, 48, 49, 61, 63

FRAUD—*continued.*
of husband, 120
on husband, 88, 120
husband's liability for wife's, 59, 62, 70
marriage part of, 90, 105
of wife, 34, 35. 59
See CREDITOR; HUSBAND.

FRAUD ON MARITAL RIGHT,
what, 118
under Act of 1870, 117
obsolete, 68

FRAUDULENT,
conveyances under Bankruptcy Act, 130
13 Eliz. c. 5, 91, 109, 131
27 Eliz. c. 4. 22
investments, with husband's money, 89, 120
against creditors, 90

FUNDS,
married woman's investments in, 79, 83, 85, 87
See INVESTMENTS.

GENERAL ENGAGEMENTS. *See* ENGAGEMENTS.

GIFT,
to separate use by husband, 7, 8, 80, 89, 90, 120
stranger, 7, 80
investment, 9, 80
evidence of, after death, 8, 89, 120
not made valid against creditors under sec. 10, 89, 90

GOVERNMENT ANNUITIES, 79, 83, 85, 87. *See* INVESTMENTS.

GRANDCHILDREN,
married woman liable to maintain, 133, 134
not before the Act of 1882, 133, 134

GUARDIAN, POOR LAW,
liability of husband or wife, at option of, 134
no claim on fund in court, 133
can apply for order of maintenance on married woman, 132

HEIR,
a trustee for married woman, 16, 17
rights of in married woman's real estate, 36, 37

HUSBAND,
administrator, 37—40. *See* ADMINISTRATION.
liable on discoverture, 139
exclusive right of to be, when, 37
arrears and choses in action go to, 37
acquiescence, taking income by, 120
in separate business, 9, 65, 69, 77
consent to wife executrix or administratrix, 125
contract with by wife, 7, 22, 44
effect on real estate, 7, 8, 17
costs of defence for antenuptial liabilities, 100, 113
conveys to wife direct, 8, 44
criminal proceedings against, by wife, 96, 98
against wife by, 114
curtesy, 17, 36
dealings with during marriage, 7
discoverture, liability on, 58, 106, 107, 138, 139
See DISCOVERTURE; LIABILITY; TORTS.
estate liable for wife's liabilities during coverture, 139
gift by, 7, 8, 80, 89, 90, 120
injunction against at suit of wife, 78, App. Precedent III.
investment by in wife's name, 80
investment of wife's separate property in his name, 18, 120
intermeddling with separate business makes it his own, 65, 70
joining under old practice, 51
makes it his suit, 52
making wife defendant admits separate property, 56
married woman liable to maintain, 133
need not join in transfer of investments, 79, 87, 88
otherwise Act of 1870, 81
necessaries wife his agent for where, 60, 61

Liability. *See* LIABILITY.
antenuptial liabilities of wife, 32, 111
before Acts, 99, 100, 105, 111
under Act of 1870, 105, 111
1874, 106, 107, 111
1882, 106, 107, 111
as between husband and wife, 103
debts include contracts, query, 100, 105
breaches of trust liable for wife's, 138. *See* DEVASTAVIT.
not on wife's contracts, 60, 61, 70
shares for wife's, 82
under Companies Acts, 83, 85, 107
torts, 59
during coverture only, 59, 106, 139
to maintain wife and children, 134

HUSBAND—*continued.*
loans by wife to, 23, 70
rank after other debts in bankruptcy, 70, 71
policy effected with his money, 94
for his benefit, 91, 93
by him, 91, 93
purchase of real estate by with wife's separate property, 17
questions between wife and, 115
what are likely, 118
reputed ownership of, 89, 90
rights of at common law, 5
in wife's equity to a settlement, 9
trustee for wife, 4, 6, 16
whether under Act of 1882, 43, 67, 127
wife's insurable interest in life of, 11, 13, 93
See CHOSE IN ACTION; COMMUNICATIONS; CREDITORS; EVIDENCE; LIABILITY; MARITAL RIGHT.

INCOME,
of separate property husband's by acquiescence, 120
action for arrears of (Dixon *v.* Dixon), 120

INFANT,
married woman under Settled Land Act, 164
Settled Estates Act, 127
covenant of (Smith *v.* Lucas), 23

INJUNCTION,
against married woman, 57
against husband at suit of, 78
Appendix, Precedent III.

INSURANCE.
See POLICY.

INTENTION,
to bind separate property presumed where, 25
primâ facie under Act of 1882, 60

INTERMEDDLING,
of husband in trust makes him liable, 138
in separate business, 65, 75
of wife in administration, 138

INTESTACY,
of married woman husband takes on, 36, 45
real estate, 36

INTESTACY—*continued.*
husband no right when, 37, 38
law of, not altered by Acts, 40, 45
property coming to married woman on, 66, 73
under Act of 1870, 74

INVESTMENTS OF MARRIED WOMAN,
in what under Act of 1882, 78, 83
before the Act of 1882, 22, 84
under the Act of 1870, 80, 84
standing in her name at commencement of Act of 1882, 80, 81
placed in her name, 80
in fraud of husband, 89, 120
creditors, 90, 105, 130
jointly with others, 86
not liable for when, 82
transfer without husband when, 80
under Act of 1882, 87
limited liability, 84, 85
as trustee, 87, 124
by wife in name of husband, 120
by husband in name of wife, 80
subject to rules of company. 84, 85
liability of wife on, 22, 82, 83
liability of husband on, 82
antenuptial under Companies Acts, 83, 85, 107
See CONTRIBUTORY; CREDITORS; HUSBAND; LIABILITIES; MARRIED WOMAN.

JOINING HUSBAND,
makes it his action, 52
in action against wife under Act of 1870, 53
not necessary under sec. 12, 54, 100
no longer necessary, 54
at option of creditor, 55, 59, 113
where no separate estate, 56
See PRACTICE.

JOINT ACTION,
against husband and wife, 55, 59, 112, 113
See PRACTICE.

JOINT NAMES,
investments in of married woman and others, 86
as trustees, 124

JOINT STOCK COMPANY. *See* COMPANY.

JUDGMENT,
joint against husband and wife, 59, 112
gone at law on husband's bankruptcy, 113
against separate property, 28, 48, 49
no getting at the separate property till, 50
none where restraint on anticipation, 50
forms of decree,
See FORMS; TABLE OF CONTENTS.
no personal judgment against married woman, 27, 48, 58
See PRACTICE.

JUDICIAL SEPARATION,
effect of, 12, 28, 40, 52, 68, 97
See PROTECTION ORDER.

LEASEHOLDS,
interest of husband in, 5, 39, 45
transfer between husband and wife, 8, 44
survive to wife, 5

LEGAL INTEREST,
in property under the Act of 1882, 14, 43, 66, 127

LEGAL PERSONAL REPRESENTATIVE,
of married woman, 37, 38, 40, 41
under Act of 1882 to stand in her place, 136—7
married woman as, 124, 137

LIABILITY,
husband's,
for wife's antenuptial liabilities,
before the Acts, 99, 100, 105, 111
under the Act of 1870, 105, 111
1874, 106, 111
1882, 106, 111
Companies Acts, 83, 85, 107
difference under Acts of 1874—82, 108
as between husband and wife, 103
contracts none, 60, 61, 70
fraud, 35, 59, 138, 139
torts, 59, 62, 70
breach of trust, 125, 138, 139
shares, 82, 83, 85, 107
to be sued by wife, 48, 95
not in tort, 57, 97
to criminal proceedings by wife, 96, 98
to maintain wife and children, 134

LIABILITY—*continued.*
wife's
antenuptial, 32, 99
before Acts, 32, 99
under Act of 1870, 33, 99
1874, 100
1882, 33, 101
primary, 103
to criminal proceedings by husband, 114
whether personal, 27, 48, 58
extent of before Act of 1882, 29
under Act, 48, 49, 60, 63
on after-acquired separate property, 63
to maintain husband and children, 132
grandchildren, 133
none where restrained from anticipation, 50
for contract. *See* CONTRACT.
for tort, 58, 59
to bankruptcy, 27, 48, 58, 64
of property coming to married woman discoverture, 49
of wife's personal representative, 136, 137
restraint on anticipation, effect on, 49, 63

LIBEL,
married woman could sue for, 97

LIMIT OF VALUE,
in County Court, 122

LIMITATIONS, STATUTE OF,
does not apply to separate property, 31, 58, 100, 136
whether under the Acts, 32, 58, 136
whether to ante-nuptial liabilities, 100

LOANS,
by wife to husband, 71
at varying rate of interest, 71
wife postponed to other creditors, 71

MAINTENANCE,
of children and grandchildren by wife, 133, 134
by husband, 134
of husband, 132—3
of husband's children, wife not liable for, 134
secus husband, 134
inquiry as to, 134
of infant by wife living apart, 62

MALINS' ACT,
disposition of wise's reversionary interests in personalty under, 76
set out, 160
amended by Conveyancing Act, 1882, 160
See STATUTES, 20 & 21 Vict. c. 57

MARITAL RIGHT,
husband no longer takes in, 67
See HUSBAND; FRAUD.

MARRIAGE SETTLEMENT. *See* SETTLEMENT.

MARRIED WOMAN,
action by, 51
against, 51
alienation by, 16—18
by will, 19—21
under Act of 1882, 42—45
antenuptial debts of, include breaches of trust, 101
liabilities. *See* LIABILITIES; SEPARATE ESTATE.
bankruptcy of, 27, 48, 58, 64
bound by proceedings, 57
breaches of trust by, 35, 60, 64, 137, 138
committal of, 33, 114
where treated as a feme sole, 56
contributory, 82
conveyance to her husband, 8, 44, 158
contract of. *See* CONTRACT.
creditors of, 29, 90, 105, 111. *See* CREDITORS; FRAUD.
criminal proceedings against, 3, 114
gifts to, 7, 8, 9, 80, 89, 90, 120
injunction against, and in favour of, 57
intestacy of, 36, 37, 38, 40, 45
investments by. *See* INVESTMENTS.
in name of, 80
judgment against not personal, 27, 48, 58
liability of. *See* LIABILITY.
maintenance of husband, 132, 133
children, 133, 134
grandchildren, 133, 134
partner, 22
with husband, 71
property coming to, during coverture, 66, 73
before Acts, 66, 73
under Act of 1870, 74
under Act of 1882, 66, 73
shareholder, 22, 82

MARRIED WOMAN—*continued.*
suing, before Acts, 51
in own name, 52, 53, 54
under Act of 1870, 53
Divorce Act, 52
Order XVI. r. 8, 53
Act of 1882, 54
tort, liability for, 48, 59
not before Act, 35, 58
trust, capable of, 46
liability for, 60, 63, 137
will of, 18—21, 40, 45. *See* WILL.
See CREDITOR; HUSBAND; INVESTMENT; LIABILITY; POLICY; SEPARATE PROPERTY.

NECESSARIES,
what are, 61
wife has authority to contract for, 60
during husband's absence, 61
where wife is living separate, 61
where separation caused by husband's misconduct, 61
wife's misconduct, 61
moneys advanced to the wife for, 61, 62
supplied to child living with mother under 2 & 3 Vict. c. 54, 62
death of husband revokes authority, 62
wife of lunatic, 62

NEXT FRIEND,
in actions by wife, 52
authority to, 52
cannot sue without a solicitor, 52
no longer necessary, 52, 54, 56
dispensed with under Order XVI., 8, 53

NUISANCE,
married woman could not sue for, 97

ONUS,
of proof, that contract was intended to bind—
when on creditor, 25
after Act of 1882, on married woman, 60
on wife where husband has invested her property in his name, 120
on husband where in hers, 79, 81, 83, 120
of husband's authority, 61
on person claiming investments standing in her name, 79, 81, 83, 120

ORDERS, 1875, R. S. C.—
IX. r. 3, 55, 114
XI., 55
XIV. r. 1 A, 58
XVI. r. 8, 53, 55, 114, 123
XVII. r. 4—7, 54, 114
XLVI. r. 2, 81
LV., 113
LVIII., 121
County Court Rules, 1875, XL., 121

PARISH, 132, 133

PARTIES,
to action, 51
See PRACTICE.

PARTNER,
married woman can be, 22
of her husband, 71
under 28 & 29 Vict. c. 86, 71

PAYMENT OUT OF COURT, 56, 75, 133

PERSONAL LIABILITY,
of married woman, 27, 48, 58

PERSONALTY,
coming to married woman on intestacy, 66, 74, 75
married woman's powers over, 18
intestacy of married woman, 37—41
right of widow in, 40
under Act of 1882, 43
will of, with husband's assent, 19
separate property, 18

PETITION,
application under the Trustee Act by, 92, 94
under sec. 11 of Act of 1882 by p. or summons, 94

POLICY
effected by married woman, 11, 13
under the Act, 91, 93
trust of by husband or wife, 92, 93
trustees of, appointed by settlor, 92, 93
or by Court, 92, 94
settlement of, within the Bankruptcy Act, 93
devolution of, 92
not to form part of settlor's estate, 92
discharge to the office of, 95

POLICY—*continued.*
payment into Court under Trustee Relief Act, 95
moneys distributed as on intestacy, 94
POOR LAW, 132, 133
See GUARDIAN; MAINTENANCE.
POWER,
exercise of rendering separate property liable, 30, 72
by will, 30, 72, 73
will speaks from death for the purposes of, 73
POWER OF ATTORNEY,
married woman could not execute, 22
under Conveyancing Act, 1881, 157
PRACTICE
in action by married woman, 51
she may sue without trustees appointed, 56
where the wife may sue separately by leave, 55, 56
where it is the husband's action, 52
married woman's consent in partition action, 52
next friend must have sued by, 52
or *in formâ pauperis*, 52
under Divorce Act sued alone, 52
must obtain order before she brings action, 53
claims by husband or wife may be joined with claims by either separately, 54
suing under Order XVI. r. 8 separately, 53
security for costs under, when required, 53
leave to, given after commencement of action, 58
under sec. 11 of Act of 1870, 53
for what property, 53
under Act of 1882, sec. 1 (2)
cannot sue her husband for personal tort, 57, 97
the action whether in contract or tort in her own name, 54
for rights accrued before the Act, 54
whether if she has no separate property, 56
in action against married woman,
where it is husband's action, 52
husband must be joined to charge separate property, 54
not under sec. 12, 1870, 54, 100
not under Act of 1882, 54
claims against husband and wife may be joined with claims against them separately, 54
service on husband good on wife, 55
out of the jurisdiction, 55
where the wife may defend separately, 55
only by leave, 55, 56

PRACTICE—*continued.*
in action against married woman—*continued.*
husband may make his wife defendant, 56
by doing so admits it to be separate property, 51
married woman not pleading coverture treated as a *feme sole*, 56
separate examination not necessary, 56
affidavit of no settlement, 57
restraint on anticipation paying out of court, 57
married woman bound by proceedings, 57
attached where she answered separately, 57
undertaking for damages by, 57
injunction enforced against, 57
husband not liable for her breach when, 58
no personal judgment against, 58
judgment against, without prejudice to trustees, 58. App. Form X.
costs, married woman condemned in, 59
enforced against separate estate, 60
in favour of married woman, 60
to be her separate property, 48
to come out of her separate property, 48
of husband, for antenuptial liabilities, 100, 113
of stakeholder, 123

PRECEDENTS.
charge on separate property, I., II.
claim against husband, I., II., III., IV.
indorsement of writ, I.
injunction, III.
notice of motion, IV.
statement of claim, II., III.
summons, IV.
See TABLE OF CONTENTS.

PRIVATE ROOM,
applications under sec. 9 of the Act of 1870 and sec. 17 of Act of 1882 heard in, 116, 118

PROBATE,
wife cannot take, without husband's consent, 125
husband's assent to, of wife's, 19
granted to attorney for the wife, 125

PROPERTY
accrues to husband at common law, 5
accruing to married woman during coverture, before the Acts, 13, 66, 73
under Act of 1870, sec. 7, 8, 74
Act of 1882, 13, 43, 66, 73, 76
Divorce Act, 68, 76, 88

PROPERTY—*continued.*
coming to woman married before the Act of 1882, 76
includes chose in action, 137, 139
otherwise under Divorce Acts, 68, 76

PROTECTION ORDER
under 20 & 21 Vict. c. 85 (*see* App. p. 151), 12
contract under, 51
torts under, 59
suing under, 52, 97
bankruptcy under, 28
discharges restraint on anticipation, 127
intestacy under, 37

QUESTIONS
between husband and wife, how tried, 116
under sec. 9 of Act of 1870, 117
under sec. 17 of Act of 1882, 117
what they will be, 118
may be heard like ordinary actions, 117

REAL ESTATE,
curtesy in, 17, 36, 40
disposed of under Fines and Recoveries Act, 9, 160
without, by contract with husband, 9, 17
when held as separate property, 16
coming to married woman during coverture, 30, 66, 74, 75
in equity, 16
husband's rights in wife's, 5
husband and wife may convey to each other, 8, 44, 158
intestacy as to, 36
legal estate in, 14, 43, 66, 127
married woman may enlarge estate tail in, notwithstanding restraint, 128
married woman trustee of, 47
under Act of 1870, secs. 1 and 8, 43
under Act of 1882, 43, 125

RECEIPT
of married woman trustee, 46, 124
of trustees of policy, 92
of legal personal representative where Office has no notice of trustees, 92, 95

REMEDIES
of married woman for the protection, &c. of her separate property, 95, 96, 97
See CREDITOR; LIABILITY.

RENTS,
husband's by acquiescence, 120
wife can only sue for one year's arrears of (*Dixon* v. *Dixon*), 120

REPEAL
of Acts of 1870—4, 135
not to affect rights or liabilities under, 135
powers of suing under saving, 135
of Acts by Conveyancing Act, 1882, 163

REPUTED OWNERSHIP
of husband, 90
separate estate in, recognised at law, 18

RESTRAINT ON ANTICIPATION,
how created, 127
comes into operation on marriage, 128
property subject to not liable, 49, 50, 63
on property on discoverture will restrain during marriage, 128
on absolute gift of property producing income, 128
when it does not apply, 128
will not prevent the enlargement of an estate tail, 128
the 20 & 21 Vict. c. 85 discharges, 127
Court could not discharge, 128
can under Conveyancing Act, 128
and Settled Estates Act, 128
and in partition suit, 129
does not protect from antenuptial debts, 129
under section 19 of Act of 1882, 130

RIGHTS AND LIABILITIES
of persons married before the Act preserved, 135
See LIABILITIES; HUSBAND.

SAVINGS
of a married woman, 11, 119
out of money for household purposes her husband's, 11, 119
out of a voluntary allowance on separation, 119

SCOTLAND,
Act does not apply to, 140
Acts as to married women in, 140

SECURITY FOR COSTS,
when taken from a married woman, 53

SEPARATE PROPERTY,
acquired how, 6–21
by trust or contract, 6
dealings with husband, 7
equity to settlement, 9
savings, 11
desertion, 12
protection order, 12
judicial separation, 12
Acts, 13
Act of 1870, sec. 1, 13, 43
7, 13, 74
8, 13, 74
Act of 1882, sec. 2, 66
5, 73
destroyed by acquiescence of wife, 7, 75, 121, 142
no distinction between statutory and equitable, 44, 50
what liable, 49
purchase of real estate by husband with, 18
investment of in husband's name, 120
married woman can contract on, 21, 42, 48, 60, 62
questions between husband and wife not limited to, 117
remedies for the protection, &c., of, 96
after acquired, 29, 63, 127
husband trustee for wife when, 16, 46
under Act of 1882 no longer, 14, 43, 66, 127
what words will create, 6
curtesy in, 17, 36, 40
effect of fraud on, 34, 35, 59

SEPARATE TRADE. *See* TRADE.

SEPARATE USE,
doctrine of, 4, 5
will arise on second marriage, 6, 7, 67, 75, 142
what words will create, 6
See SEPARATE PROPERTY.

SEPARATION,
separate property acquired by, 12
husband's authority on, 61
presumption raised by, 25
judicial, effect of. *See* PROTECTION ORDER.

SERVICE,
on husband good on wife, 55
out of jurisdiction, 55

SETTLED ESTATES ACT, 127

SETTLED LAND ACT, 127, 163

SETTLEMENT,
marriage still necessary, 3, 126
void against creditors, 130
of policy within Bankruptcy Act, 93
Act of 1882 does not affect, 77, 126
by woman of her own property, 126, 130
by sole trader within Bankruptcy Act, 130
fraudulent, 130—1
equity to. *See* EQUITY TO A SETTLEMENT.

SHAREHOLDER,
married woman can be, 22
unless contrary to deed of settlement, 22, 84, 85
under Act of 1882, 79, 83, 85, 87
See INVESTMENTS.

SOCIETY. *See* BANK; COMPANY.

SOLE TRADER. *See* TRADE.

SPECIFIC PERFORMANCE
enforced against and in favour of married woman, 22

STAKEHOLDER,
costs of, 123
not entitled to pay money into Court, 123
position of as trustee or agent, 123
may apply under sec. 17, 115, 117

STATUTES,
15 Edw. III. c. 5. Administrators, 37
34 & 35 Hen. VIII. c. 5. Wills, 19
13 Eliz. c. 5. Creditors, 130, 131
27 Eliz. c. 4. Voluntary Conveyances, 22
43 Eliz. c. 2. Poor Law, 133, 135
29 Car. II. c. 3. Frauds, 37, 38
3 & 4 Will. IV. c. 74. Fines and Recoveries, 14, 17, 47, 76, 160
4 & 5 Will. IV. c. 82. Jurisdiction, 55
7 Will. IV. and 1 Vict. c. 26. Wills Act, 18, 20, 45
9 & 10 Vict. c. 95, 122, 123
10 & 11 Vict. c. 96. Trustee's Relief, 94
11 & 12 Vict. c. 43, 133
13 & 14 Vict. c. 60. Trustee Act, 1850, 92, 94
13 & 14 Vict. c. 61, 122
14 & 15 Vict. c. 99, 97
16 & 17 Vict. c. 83, 97, 98
20 & 21 Vict. c. 57. Malins' Act, 76, 160

STATUTES—*continued.*
20 & 21 Vict. c. 77, 125
20 & 21 Vict. c. 85. Divorce, 12, 28, 45, 51, 59, 76, 127, 160
21 & 22 Vict. c. 108. Divorce, 45, 76, 160
25 & 26 Vict. c. 89. Companies Act, 1862, 83, 85, 107
28 & 29 Vict. c. 99, 122
30 & 31 Vict. c. 142, 122
31 & 32 Vict. c. 122. Poor Law, 132
32 & 33 Vict. c. 104. Bankruptcy Act, 1869, 91, 93. 130, 131
33 & 34 Vict. c. 93. Married Women's Property Act, 1870, 141
37 & 38 Vict. c. 50. „ „ „ 1874, 150
37 & 38 Vict. c. 78. Vendor and Purchaser Act, 1874, 47
40 & 41 Vict. c. 29. } Married Women's Property Acts (Scot-
43 & 44 Vict. c. 21. } land), 140
40 & 41 Vict. c. 18. Settled Estates, 1877, 127
44 & 45 Vict. c. 41. Conveyancing, 1881, 8, 22, 44, 94, 157
45 & 46 Vict. c. 38. Settled Land, 1882, 127, 163
45 & 46 Vict. c. 39. Conveyancing, 1882, 14, 17, 47, 76, 128, 158
45 & 46 Vict. c. 15. Married Women's Property, 1882, 42

STATUTE OF LIMITATIONS. *See* LIMITATION, STATUTE OF.

STOCK. *See* INVESTMENTS.

STOCK-IN-TRADE
is separate property, as well as earnings, 77

SUING. *See* ACTION ; PRACTICE.

SUMMONS,
appointment of trustees on, 92, 94
under sec. 17, 116

THIRD PARTIES,
whether they can be brought before the Court under sec. 17, 118

TORT,
husband and wife can sue each in when, 57, 97
married woman can sue in, 48
liability of husband for wife's, 35, 59, 138
wife, 59, 138
antenuptial. *See* LIABILITY.

TRADE, SEPARATE,
what is, 65
must be lawful, 66
by custom of London, 28, 64
by husband's acquiescence, 9, 65, 69, 77

TRADE, SEPARATE—*continued.*
under Act of 1870, 65, 77
1882, 69, 77
woman engaged in, made bankrupt, 28, 64
husband not liable for contracts in, 70
secus trustees, 70
injunction against husband intermeddling, 78

TRANSFER
between husband and wife, 8, 44, 89, 157
of investments without husband,
could not under Act of 1870, 84
can under Act of 1880, 84, 85, 87

TRUST PROPERTY,
whether included in Act of 1882, 45, 47, 124, 127
Act of 1870, 45
Divorce Act, 45
real property, 47

TRUSTEE,
married woman, advisability of appointing, 46, 48, 124
need not wait for appointment of, in order to sue, 56
take legal estate where, 14, 43. 127
for married woman the same for a man, 67, 126
no order against in his absence, 58, 118

TRUSTEE ACT, 1850,
13 & 14 Vict. c. 60, 92, 94

TRUSTEE RELIEF ACT,
10 & 11 Vict. c. 96, 94

VALUE,
limit to jurisdiction in County Court, 122

VENDOR AND PURCHASER ACT, 1874,
47

WAGES
and earnings under Acts of 1870—82, 12, 69, 77
include stock, 77

WEDDING PRESENT,
whether separate property, 7

WIDOW,
liability of, to maintain children, 134
and grandchildren, 134
right in intestate's estate, 40
not equal to husband's, 40
liability for devastavits, 138, 139

WIFE. *See* MARRIED WOMAN.

WILL,
of real estate by married woman in equity, 16, 19, 20
cannot dispose of legal estate by, 16, 19
when she can dispose of her reversionary interest in, 17
of personal estate in equity, 18, 20
at law assent of husband necessary, 19
at law married woman could make a will when, 18
effect of the Wills Act on, 19, 45
rules of interpretation in apply to, 20
but gives no validity to disposition during marriage of property acquired on discoverture, 20, 45
speaking from death includes power, 20
Thomas *v.* Jones, and Noble *v.* Willock, 21
death of husband no effect on separate estate, 20, 45
of married woman's realty under power not entitled to probate, 21
husband's undue influence, 21
under Act of 1882, 42—45
can dispose of legal estate by, 43
execution of general power by, 72
will speaks from death on, 73
under Act of 1870,
legal estate can she dispose of by, 43
property coming to married woman by, under Act of 1882, 66, 67, 73, 75, 76
under Act of 1870, sec. 7 and 8, 74
settlement on married woman in, not affected by Act, 125, 126

WILLS ACT,
married woman's will interpreted by, 20
no greater powers to married woman under, 19
makes will speak from death, 18, 20, 73
See WILL.

BRADBURY, AGNEW, & CO., PRINTERS, WHITEFRIARS.

94

Maxwell on Statutes.

The Interpretation of Statutes. By Sir PETER BENSON MAXWELL, late Chief Justice of the Straits Settlements. 8vo. Price 16*s.* cloth. 1875.

Maclachlan's Law of Merchant Shipping. Third Edition.

A Treatise on the Law of Merchant Shipping. By DAVID MACLACHLAN, M.A., of the Middle Temple, Barrister-at-Law. Royal 8vo. Price 2*l.* cloth. 1880.

The Bankruptcy Act, 1869, and the Debtors Acts, 1869 and 1878. Second Edition.

Including the Rules, Orders, and Forms, and the Decisions thereon, with careful cross references. By F. PITT-TAYLOR, Barrister-at-Law. Crown 8vo. Price 14*s.* cloth. 1880.

Elphinstone's Introduction to Conveyancing. Second Edition.

A Practical Introduction to Conveyancing, containing the substance of Two Courses of Lectures delivered before the Incorporated Law Society in 1869, 1870 and 1871. By HOWARD WARBURTON ELPHINSTONE, of Lincoln's Inn, Barrister-at-Law. 8vo. Price 14*s.* cloth. 1881.

"This is an excellent book to put into the hands of the tyro in conveyancing. Principles are well and succinctly stated; sufficient detail is added to impart interest to the statement, and the book is written in an easy and familiar style. On most of the leading branches of conveyancing, the information given is accurate and thorough."—*Solicitors' Journal*, July 2, 1881.

Williams and Bruce's Admiralty Practice.

The Jurisdiction and Practice of the High Court of Admiralty, including the Practice on Appeals, with forms of Pleadings, &c.; together with a Supplement, containing the County Courts' Admiralty Jurisdiction Act, 1868, and the General Orders for Regulating the Practice thereof. By ROBERT GRIFFITH WILLIAMS and GAINSFORD BRUCE, of the Middle Temple, Esquires, Barristers-at-Law. In 1 vol. 8vo. Price 1*l.* 4*s.* cloth. 1869.

Woodfall's Law of Landlord and Tenant. Twelfth Edition.

A Practical Treatise on the Law of Landlord and Tenant, with a full Collection of Precedents and Forms of Procedure. By J. M. LELY, Esq., of the Inner Temple, Barrister-at-Law. Royal 8vo. Price 1*l.* 18*s.* cloth. 1881.

Steer's Parish Law. Fourth Edition.

Being a Digest of the Law relating to the Civil and Ecclesiastical Government of Parishes, and the Relief of the Poor. By W. H. MACNAMARA, Esq., of the Inner Temple, Barrister-at-Law. 8vo. Price 16*s.* cloth. 1881.

Lindley's Law of Partnership. Fourth Edition.

A Treatise on the Law of Partnership, including its application to Joint Stock and other Companies. Revised throughout; several parts, and especially those portions affected by the Judicature Acts and Rules, being re-written. By Sir NATHANIEL LINDLEY, one of the Judges of Her Majesty's High Court of Justice. In 2 vols. Royal 8vo. Price 3*l.* 15*s.* cloth. 1878.

Lewin's (Thos.) Law of Trusts. Seventh Edition.

A Practical Treatise on the Law of Trusts. Seventh Edition. By F. A. LEWIN, Esq., of Lincoln's Inn, Barrister-at-Law. Royal 8vo. Price 1*l.* 18*s.* cloth. 1879.

Davidson's Precedents in Conveyancing.

Precedents and Forms in Conveyancing, with an Introduction and Practical Notes. By CHARLES DAVIDSON, THOMAS COOKE WRIGHT, J. WALEY, T. KEY, M. G. DAVIDSON, and J. KHELAT DARLEY, Esqs., of Lincoln's Inn, Barristers-at-Law. 5 vols. Royal 8vo. Price 12*l.* 4*s.* 6*d.* 1873-81.

Broom's Legal Maxims. Fifth Edition.

A Selection of Legal Maxims, Classified and Illustrated. By HERBERT BROOM, LL.D., Barrister-at-Law. 8vo. Price 1*l.* 11*s.* 6*d.* 1870.

Broom's Constitutional Law.

Constitutional Law, viewed in relation to Common Law, and exemplified by Cases. By HERBERT BROOM, LL.D., Barrister-at-Law, late Professor of Common Law to the Inns of Court. In 1 vol. 8vo. Price 1*l.* 11*s.* 6*d.* cloth. 1866.

White and Tudor's Leading Cases in Equity. Fifth Edition.

A Selection of Leading Cases in Equity; with Notes; in Two Volumes. Vol. I.—By FREDERICK THOMAS WHITE and OWEN DAVIES TUDOR, Esqrs., of the Middle Temple, Barristers-at-Law. Vol. II.—By OWEN DAVIES TUDOR, Esq., of the Middle Temple, Barrister-at-Law. In 2 vols. Royal 8vo. Price 3*l.* 18*s.* cloth. 1871.

Coote on the Law of Mortgage. Fourth Edition.

A Treatise on the Law of Mortgage. By W. WYLLYS MACKESON, Esq., of the Inner Temple, one of Her Majesty's Counsel. Royal 8vo. Price 2*l.* 2*s.* cloth. 1881.

Taylor's Law of Evidence. Seventh Edition.

A Treatise on the Law of Evidence, as administered in England and Ireland, with Illustrations from the American and other Foreign Laws. By JOHN PITT-TAYLOR, Esq., Judge of the County Courts for Lambeth, Greenwich, and Woolwich. In 2 vols. Royal 8vo. Price 3*l.* 15*s.* cloth. 1878.

Smith's Mercantile Law. Ninth Edition.

A Compendium of Mercantile Law. By JOHN WILLIAM SMITH, Esq., of the Inner Temple, Barrister-at-Law. Ninth Edition, by G. M. DOWDESWELL, Esq., of the Inner Temple, Barrister-at-Law. Royal 8vo. Price 1*l.* 18*s.* cloth. 1877.

Smith's (John Wm.) Law of Contracts. Seventh Edition.

By V. T. THOMPSON, Esq., M.A., of Lincoln's Inn, Barrister-at-Law. Demy 8vo. Price 21*s.* cloth. 1878.

Foulkes' Action at Law. Founded on "Smith's Action at Law."

An Elementary View of the Proceedings in an Action in the Supreme Court. By W. J. D. FOULKES, Esq., Barrister-at-Law. 12mo. Price 10*s.* 6*d.* cloth. 1879.

Haynes' Outlines of Equity. Fifth Edition.

Outlines of Equity; being a Series of Elementary Lectures on Equity Jurisdiction, deli[illegible] request of the Incorporated Law Society: with Su[illegible] Doctrines of Equity. By FREEMAN O[illegible]n, Barrister-at-Law, and late Fellow [illegible]rown 8vo. Price 14*s.* cloth. 1880.